



How to Successfully Protect Your IP in China in 2023

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Introduction

When you're busy building your business, there's a lot to think about, including how to best protect your ideas and hard-earned assets — especially when you're expanding into or managing your supply chain involving overseas markets like China. The last thing you want is for someone to use your ideas for their own profits, or to run up thousands in legal fees when taking a guilty party to court.

That's where intellectual property (IP) protection comes in, keeping your innovative ideas, products and services safe, and giving you a competitive advantage. In today's fast changing global economy, having a practical and regularly updated IP protection strategy is more important than ever, no matter whether you're running a domestic production facility, an eCommerce shop or a multi-country supply chain involving China.

It might sound daunting, but setting up your China IP protection strategy is easier than it sounds (we promise!).

In today's global economy, having an IP protection strategy is more important than ever.



In the past three months, Trustiics has worked with China IP legal experts (who are lawyers registered on Trustiics) and prepared this China IP Protection White Paper. The goal is to provide a handy step-by-step guide for 200+ Trustiics-registered SMEs as well as other North American businesses to use as a reference in protecting their valuable IP at home and abroad, especially in the Chinese market, in the year 2023.



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The information provided in this white paper does not, and is not intended to, constitute legal advice or opinions of any kind. No one should act based solely upon the materials provided in this white paper without first seeking appropriate legal advice from qualified lawyers in the relevant jurisdiction with respect to any particular legal matter.

Please contact support@trustiics.com if you have any questions regarding this white paper, or if you have any IP, regulatory or other legal issue in China, or any question about Trustiics in general.

TRUST↑ICS



Ideas
Technologies
Original
processes
Designs
Brand
identity
Services

1 What is Intellectual Property Protection?

First thing's first: let's take a look at what intellectual property actually means. As a term, IP covers intangible things like your [ideas, designs and original processes](#), as well as business assets, such as your services, technologies, and brand identity.

Below are the four main types of IP rights.

Patent

Issued by your government, a patent ensures that others cannot make, use or sell your invention. It safeguards new inventions — which can be anything from a product to a process — as well as protecting improvements to an existing invention.

In Canada, a patent applies within the country for 20 years from the date you first filed it. If you ask us, that's a pretty good bang for your buck!

Trademark

A trademark is the word(s), sound or symbol used to represent a business or product. For example, you might have Googled 'China IP protection' to get to this guide, and the word 'Google' is a trademark. So is 'Trustiics'!

Copyright

Generally speaking, copyright gives an individual the sole, exclusive legal right to produce or reproduce a piece of work. Often, it provides protection for artistic works (e.g. a book, song, or play), but can also include things like computer programs.

Trade Secrets

Simply put, a trade secret is something that has inherent value because it isn't known by people outside of a company. This can include things like formulas, ingredients,

sales and distribution methods, client lists, and more. A very popular example of a trade secret is the Coca Cola recipe, which has been heavily-guarded for over a century.

2 Do I Need an IP Protection Strategy?



When done correctly, an IP strategy allows you to plan your business' long-term development and growth, including how to monetize all of your assets.

So, now that you know what IP protection is, you might be wondering how important an IP protection strategy really is.

Look, new inventions are made every single day. The top-secret product that you're developing? Someone else might be developing the very same thing, right this minute — but that doesn't mean you shouldn't protect your invention. In a few years' time, it might be your creation that's dominating the marketplace — and you want to be sure you're ready when that happens.

When done correctly, an IP strategy allows you to plan your business' long-term development and growth, including how to monetize all of your assets. Especially when you're looking to expand overseas, an IP strategy shields you against competitors who may be trying to use your innovations, and ensures you keep your edge in ever-competitive markets.

Don't just take our word for it. [According to BDC](#), small to medium-sized enterprises with IP protections are:

- 1.6 times more likely to experience high growth
- 2 times more likely to innovate
- 3 times more likely to expand domestically
- 4.3 times more likely to expand internationally

The results speak for themselves; by investing in your IP protections, you're setting yourself up for sky-rocketing future success. And if you don't, you could be opening yourself up to some pretty major risks.

3 IP Risks When Doing Business Domestically

Here are the three most common IP risks you'll come up against, no matter where you're doing business.

Domain Name Squatting - a.k.a. 'Bad Faith' Domain Registration

'Squatting' is when someone unlawfully occupies an otherwise empty building or piece of land. Domain name squatting — or ['cybersquatting'](#) — is the same, but in the digital space. In these scenarios, cybersquatters will register the domains of well-known companies. Once those well-known companies realize their domain name has been bought, cybersquatters will try to sell the domain to them, but at massively inflated prices.

Another tactic currently being used is the registering of a domain name close to the name of a competitor. This way, when customers mistype the URL of an entity's competitor, they will end up on the entity's website instead.

There are a few ways to prevent bad faith domain registration from happening to you:

- The first step is to ensure you've registered your trademark.
- Then, ensure you've recorded proper domain ownership. For example, as the business owner, you should be the one who owns the domain, not one of your employees.
- If you want to go the extra mile, buy up several variations of your domain, and link them to your website.

Trademark Theft

Trademark theft includes things like producing a brand identity or logo that is similar enough to another company so as to confuse customers. A prime example of this is the selling of 'knock off' items, or falsely-branded goods, such as fake designer handbags.

3 most common IP risks

- **Domain name squatting**
- **Trademark theft**
- **Patent theft**



How to prevent bad faith domain registration:

- Register your trademark.
- Record proper domain ownership.
- Optional: buy up several variations of your domain, and link them to your website.

As with domain name squatting, registering your trademark can help protect you against others using your trademark without your consent. It's up to you to ensure your trademark registration is active; in Canada, a trademark becomes invalidated if not used in three years.

[Here's a list of reasons why your trademark might get invalidated](#), including things like a lack of distinctiveness.

Patent Theft

Protecting your patent is a balancing act. You've had your 'eureka!' moment, and you know your invention is a shoe-in. To make money from it, you'll probably need to license out the invention, so another business can manufacture it. That means you're pounding the pavement, pitching your invention to different businesses, and having to trust that they won't run away with your idea.

There are two steps you can take to protect your patent: register it, and then require that all businesses sign a non-disclosure agreement (more on that to come).

And hey, these are just IP risks you can run up against on a domestic level. There's a whole other laundry list of challenges when you do business internationally.

4 IP Risks When Doing Business Internationally

Here's a real-life story for you, shared by [Robert Wright](#), a US-based attorney. Wright has a client who we'll call Mia; Mia is a single mom based in New Zealand, working a side hustle to make a little extra money to support her child, who has Autism Spectrum Disorder. With an enterprising spirit, Mia would purchase off-the-shelf, white-label products, brand them, and sell them on Amazon to buyers across the world.

Mia was doing well for herself, until a China-based supplier filed for a design patent of the white-label product. Wright says that the patent shouldn't have been granted in the first place, because the product in question was a common



Your IP rights only exist in the country where you registered your IP.

household item in the U.S., but somehow, it ended up being registered anyway.

The day before Black Friday sales, when Mia would make the most money, the China-based supplier filed complaints against all its competitors. Almost every Amazon store selling the white-label product got taken down, including Mia's.

Thankfully, Wright was able to work with Mia to jump-start her business after the hit. She got back on her feet, and within two years, received a seven-figure deal for her business — but when the buyer did their China IP due diligence, they found someone had already registered Mia's trademark.

You guessed it: someone was using Mia's brand reputation and trademark to do business in China. The whole deal almost went sideways, Wright says, but he was able to work with Mia and the buyer to get the issue sorted. In the end, Mia's story was a happy one — but it was a nail-biting journey to get to that point.

Clearly, there are several IP risks when doing business internationally. Here are some of the major pitfalls to keep in mind, and what you can do to shield yourself from IP infringement or theft.

Territorial Rights

First thing's first: your IP rights only exist in the country where you registered your IP. So if you only registered your IP in Canada, you don't automatically have rights in China — you'll need to register your IP in China, too.

It's imperative that you register your IP in all countries where you'll be doing business. Bonus points if you register before you even start operating in your new territory.

Different Countries Have Different IP Laws

There are key differences between Canada's IP protection laws, and the laws in China — for example, China has a First to File Trademarks policy (more on that below).

It's important that you understand the legal landscape you're stepping into. [Services like Trustiics can help with this](#), offering in-depth legal knowledge, to ensure you're fully prepared when expanding into the China market.

First-to-File Trademarks in China

The early bird gets the worm, and in China, the first entity to register a trademark will be granted ownership, regardless of who has used that trademark before. This means that, if you're planning to do business in China and you don't quickly register your trademark, it might get registered in bad faith by a third party.

There are many consequences that could come from this; for example, a squatter might try to sell your trademark back to you at an extortionate price, or could even sue you for IP infringement.

To prevent this happening, ensure you register your trademark in China at the earliest possible stage. The same goes for patents; after registering your patent in Canada, [you have one year to file for patent protection in China](#) — but again, the sooner, the better.

IP Registration Timelines

Every single IP application has a deadline, and timelines can differ from weeks to years depending on which country you're registering in. Make sure you jot down every single deadline so you don't leave any gaps in your protection. While some agencies might accept a late application, others won't, and that's not a gamble you want to take.

Accidentally Infringing the IP Rights of Others

Imported products may infringe on the IP rights of a domestic entity, or vice versa. For example, if your business is Canada-based, and you import products from China, you are legally responsible for those products. Without knowing it, you might be infringing on the IP of the product owner in China.



Ensure you register your trademark in China at the earliest possible stage. The same goes for patents.

We're afraid there's no shortcuts for this one: whenever you're importing, you need to ensure you're accurately screening every product. Again, services like [Trustiics](#) can connect you with vetted, trusted lawyers in China, to help ensure your T's are crossed and your I's are dotted.

Language Barriers

Another IP risk is a good old-fashioned mix-up due to cultural or language barriers. When it's translated into a second language, your registered IP might all of a sudden mean something totally different or be missing important details.

What's more, a trademark that's acceptable in one country might not be in another one, depending on cultural norms and sensitivities — so when you're doing business overseas, make sure you're working with a trusted domestic lawyer, and reputable translator.

Ownership and Licensing of IP

Whenever you're embarking on a new partnership, such as collaborating with a foreign company in a joint venture, you have to be crystal-clear about who owns the IP rights to the invisible assets that will be developed by the joint venture. If you're not, you run the risk of both you and the other party claiming exclusive rights to the same things.

Say you want your company's existing IP rights to be used by the joint venture. Most of the time, lawyers will advise against any IP co-ownership. Instead, they recommend that clients license out rights. When you set up a license, you're creating an agreement that gives a third-party permission to use your IP rights for commercial activities. Should anything happen down the road, and the partnership falls apart, your IP will be safe and protected.

There are three different types of licenses.

Non-Exclusive License

This gives a licensee the right to use your IP, while allowing you to also use your IP, as well as being able to license it out to others.



Whenever you're embarking on a new partnership, you have to be crystal-clear about who owns the IP rights to the invisible assets.

There are 3 types of licensing

- **Non-exclusive license**
- **Exclusive license**
- **Sole license**

Exclusive License

In exclusive licensing, the licensee has sole right to use the IP. In this scenario, even you — the owner of the IP — wouldn't be able to use the IP.

Sole License

Here, the sole licensee is the only entity allowed to use the IP, along with the licensor.

Having a license ensures everyone is on the same, legally-binding page, but that doesn't mean you're totally in the clear when it comes to legal risks.

Controlling License Scope

When setting up your license, you must ensure that your licensee is not using your IP in a way that's detrimental to your company. In your licensing agreement, it's important that you clearly list all of your terms, including consent requirements for certain uses of your IP.

But let's take a few steps back. Before you even set up a license, it's important that you do your **due diligence** when choosing a foreign partner, making sure that their reputation is solid, and to prevent future IP risks. Get all of your ducks in a row with your representations and warranties, as well as an [exit strategy and clear recourse plan if any conflict comes up](#).

Seeing all of these risks and challenges laid out in front of you might be incredibly overwhelming — but there's a huge upside to scaling your business and going overseas. [According to BDC](#), on average, Canadian companies that export earn higher revenues. Despite this, [only 10 percent of companies with annual revenues under \\$100 million sell overseas](#). That means there's a huge foreign market opportunity for Canadian companies to tap into, and China is one of them.



Just because you've protected your IP in Canada, doesn't mean you have IP protection in China — or anywhere else in the world, for that matter.

5 How IP Protection Works in China

Now that you're up to speed on IP basics, let's take a look at China's IP landscape. As you know by now, just because you've protected your IP in Canada, doesn't mean you have IP protection in China — or anywhere else in the world, for that matter — so when you're ready to do business in China, you must register your IP in China as well.

[Under IP laws in China, trademarks, patents, copyright, and trade secrets are all recognized as IP, and are protected.](#)

When it comes to registration, the China National Intellectual Property Administration (CNIPA) handles trademarks, and the Copyright Protection Centre of China (CPCC) handles copyright.

As we mentioned earlier, China operates on a First-to-File basis, meaning that the sooner you register your IP, the better. This is the only way to protect yourself in an established market, and to protect your existing customer base from possible fraud through things like false branding.

Don't worry, protecting your IP in China won't be an uphill battle: since joining the World Trade Organization in 2001, [China's IP protection laws have significantly improved](#), and are now in line with international standards. There are IP courts and tribunals in major cities, and a new patent law in 2022 means that designs are protected for 15 years (up from a previous 10 years).

Despite this, many companies doing business in China continue to fall victim to IP theft, which can rack up thousands in legal fees through lengthy and complicated court proceedings. That's why it's vital that you have a China-specific IP protection strategy. All the better if you can then bolster that plan with support from a lawyer.

6 What To Include in Your China Protection Strategy

When writing any IP strategy, it's important that you get your basics down, including your current assets, and how you'll:

- Leverage your IP to grow
- Establish IP infrastructure
- Execute your IP plans

The foundation of your China IP strategy will be the same as the one you're using for your domestic IP strategy, with a few more bells and whistles (ok, a *lot* more bells and whistles). Here are a few items you should be sure to include.

IP Licensing in China

You've got your IP license and you're eager to pull the trigger with a new joint venture, distribution partnership or [original equipment manufacturer](#). Before you dive in, make sure you go through this checklist.

Make Sure You Actually Own the IP

Remember, just because you own an IP in Canada or the U.S., doesn't mean you own it in China, too. Make sure you register your IP in China before trying to license anything to a third party.

Register the License Agreement with Chinese Authorities

Ok, say you've got your IP registered in China, and are ready to license it out. In most cases, it's mandatory to register license agreements in China. Note that almost all Chinese banks require the agreements to be registered with an IP authority, like the CNIPA, before they process the international wiring of a royalty payment. It is very important that you don't allow your license to go into effect before your foreign partner has shown you proof of license agreement registration in China.



China IP licensing checklist

- Make sure you register your IP in China before trying to license;
- Register the License Agreement with Chinese Authorities;
- Limit the Territory to China;
- Make Sure Your Agreement is Air-Tight.



When it comes to issuing Non-Disclosure Agreements, you're better safe than sorry.

Limit the Territory to China

A licensee in China may ask for the rights to operate with your IP in other Southeast Asian countries. What's more, the licensee's definition of China might not be what other countries define as China. Make sure your agreement is thoroughly clear about geographical boundaries.

Make Sure Your Agreement is Air-Tight

Repeat after us: your IP belongs to you, not the licensor, and [when the agreement terminates](#), your IP will return to you, and the counterparty will cease to use your IP immediately. It's very important that this is distinctly spelled out and accurately translated in your license agreement, to prevent any headaches further down the road.

Non-Disclosure Agreements (NDAs)

Depending on your business, chances are you already have some kind of [NDA](#) or [a more complicated non-disclosure, non-use and non-circumvention agreement](#) in place. These are ways to protect IP like trade secrets, patents, policies, and more.

Should you run into a legal dispute with your foreign partner, you'll want to prove that you had an NDA in place. Depending on how it's been written, NDAs can be notoriously tricky to uphold in court, but courts will take them into account, to distinguish whether or not IP was infringed. So when it comes to issuing NDAs, you're better safe than sorry.

Due Diligence Before Partnering with a Chinese Business

When you're running a business, who you partner with is a direct reflection on you. To protect your reputation as well as your IP, it's important that you ensure your partners are [law-abiding, solvent, and in good standing](#).

A lot of the information needed to do your China due diligence is at your fingertips; here are a few key items to keep in mind.

Require Proof of Qualifications and Documentation

Any legitimate business in China will have the following documents ready for your review:

- Business License
- Bank Account Certificate
- Foreign Trade Registration Certificate
- Customs Registration Certificate, if exporting and importing goods

When partnering with a business in China, don't be afraid to ask for these documents up-front.

Lawsuits

This goes without saying, but if a company you want to work with has been involved in several IP lawsuits, it's probably best to steer clear from them. However, sometimes it can be difficult to find out if a business in China has been involved in any legal disputes. The good news is that there are services out there that can help you research this information (including [Trustiics!](#)).



When it comes to working with partners, excellent communication is key, along with strong contracts and agreements.

7 What to do if Your IP Gets Stolen in China

Sometimes in life, we can do everything right, and things will still go wrong. Even if you have the strongest China IP strategy in the world, you might still fall victim to IP theft.

As well as registering your IP in China, it's important that you actively monitor the Chinese market, to ensure that your IP is not being infringed. When it comes to working with partners, excellent communication is key, along with strong contracts and agreements.

How to Bring an IP Lawsuit to China

We hope it never happens to you, but if you find a third party using your IP, you'll want to launch a lawsuit — so let's get into some specifics.



A Cease and Desist Letter notifies third parties that they are infringing on your IP rights, and demands that they stop, and not do so again in future.

As mentioned above, US and Canada-based companies may be used to dealing with 'First to Use' IP protection systems, as opposed to the ['First to File' systems used in countries like China, Japan, and the EU](#).

In 'First to Use' countries like Canada, a trademark belongs to the first company to use it in the market — not the first to register it. However, in 'First to File' countries, the trademark rights belong to whoever filed the first trademark application.

Depending on whether or not you registered your IP in China, you'll have different legal options available to you.

Here's what to do if you already have IP Protection in China

If you do have IP protection in China, you can start by sending a [Cease and Desist Letter](#).

What is a Cease and Desist Letter?

A Cease and Desist Letter notifies third parties that they are infringing on your IP rights, and demands that they stop, and not do so again in future. It outlines in great detail how your IP has been infringed upon, and lists consequences to them continuing to infringe your IP rights, including litigation or formal complaints being filed with local governments.

Typically a Cease and Desist Letter requests that third parties:

- Stop infringing your IP, including recalling any products or marketing materials that infringe your IP
- Withdraw any applications for the registration of IP that is similar to yours
- Stop disclosing your IP to others

At Trustiics, our lawyers have found a very high degree of success with using Cease and Desist letters; however, if the issue persists, you'll need to go through judicial proceedings. There are two tracks for this:

- An administrative track, where you would work with a local government agency
- A judicial track, where your claim would be filed through the court system

We might sound like a broken record, but we can't emphasize this enough: it's imperative that you work with a China-based lawyer when pursuing any kind of legal matters in China, including Cease and Desist letters, because they'll be the expert in China's laws, culture and language.



It's imperative that you work with a China-based lawyer when pursuing any kind of legal matters in China.

Here's what to do if you haven't registered your IP in China, but your IP gets infringed

It can happen to anyone; you didn't register your China IP protection in time, and now a third party is squatting your trademark or using your branding without your permission.

All is not lost. If you do not have IP protection in China, you can either:

- File an opposition to a patent or trademark filing via the CNIPA.
- If the third party's patent or registered trademark has already been approved, don't worry: you can file for an invalidation of that approval. This happens through the CNIPA's Patent Reexamination and Invalidation Department.

Again, to do any of the above successfully, you'll need to work with a China-based lawyer. We know that this can sound like a lot to handle, especially for a busy entrepreneur. Happily, you never have to go through this kind of thing alone.



How Trustiics Can Help

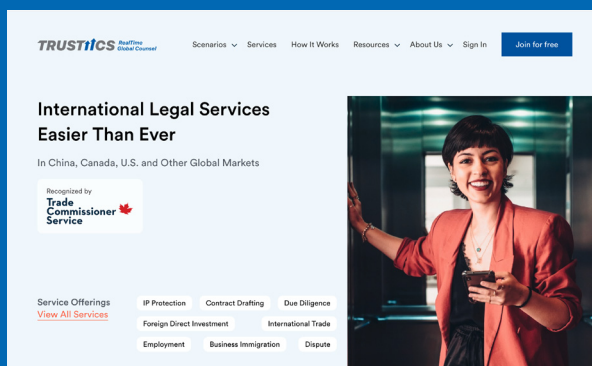
Headquartered in Canada, Trustiics is an online platform serving small to medium-sized enterprises, connecting business owners with overseas legal services through a pay-as-you-go model.

You simply choose the legal service that you require which spans from trademark registration to IP infringement cease and desist letters, as well as all other business-related legal services. Once you find what you're looking for, you place an order using your credit card. All security deposits go through an escrow account, linked to a Canadian bank.

After this, we find you a qualified legal professional through our pre-vetted pool, and select the candidate who is best-suited to your unique situation. Each one of our 300+ lawyers have gone through our strict vetting process, which includes identity and qualifications checks, clarifying areas of expertise, and contacting professional references.

Our services come recommended by established organizations including the Canadian Trade Commissioner Service, the Canadian Embassy in Beijing, and the Canada China Business Council.

No matter which services or agency you choose to work with, when you have a top-tier lawyer by your side, [with deep knowledge of IP disputes](#), you can rest assured that your business is in good hands.



Trustiics is an online platform serving small to medium-sized enterprises, connecting business owners with overseas legal services through a pay-as-you-go model.



Are you facing an intellectual property-related legal problem for your business in China? Sign up on Trustiics for free.

Contact **support@trustiics.com** if you have questions regarding our platform or need to book a demo.

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