



NCCAUS
PLASMA ETCH USERS GROUP
THIN FILM USER GROUP
CMP USERS GROUP

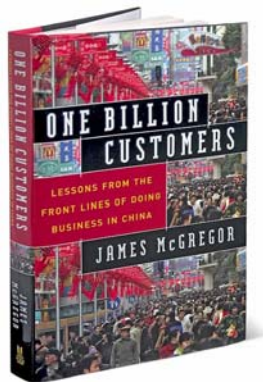
INTELLECTUAL PROPERTY AND COUNTERFEITS IN CHINA

Presented by

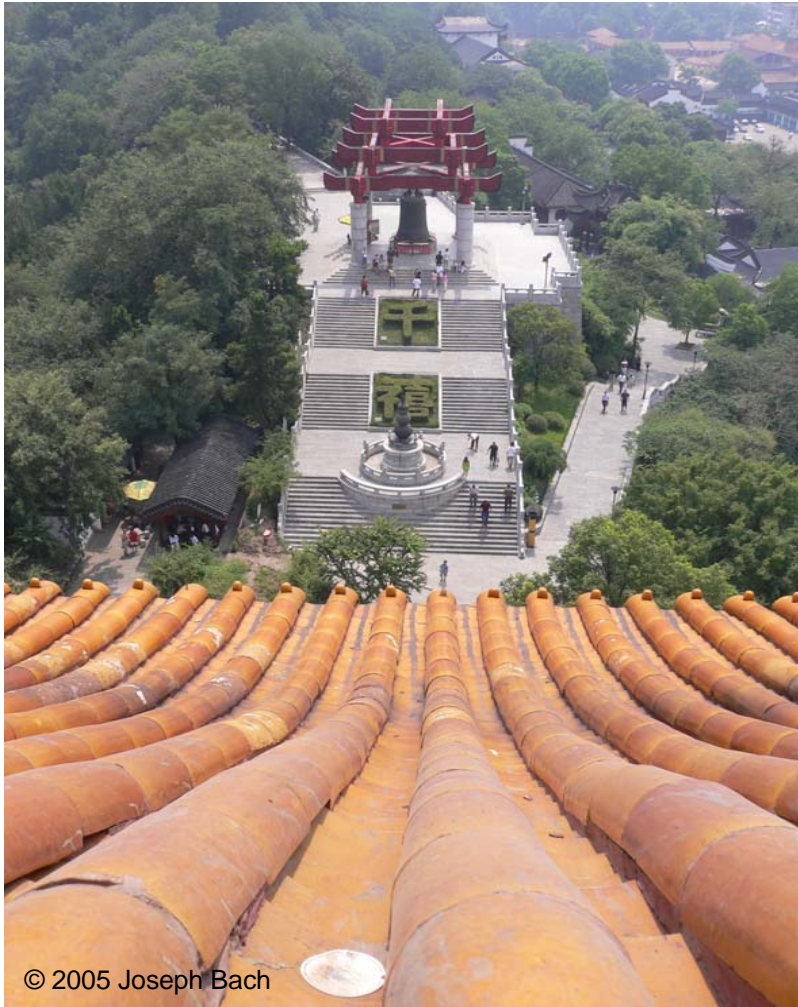
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China IP Scene



- Does China have IP law?
 - Are they good laws?
 - Can they be enforced?
 - Are they being enforced?
- Etc...

Perceptions

Global Perception:

“The Chinese are copying our IP and Chinese enforcement favors the local companies.”

Emerging Chinese Perception:

“In their quest to ease world pressure, authorities favor foreign companies.”

Examining the Reality:

Design Patents, Trade Secrets, Trademarks, and Copyrights cases.

Knockoffs, Knock it off

Beijing's defense of its Olympic logo shows it can stop the counterfeiters.



Design Patents in China

Easy to get, hard to invalidate!

1. Easy to get: No Substantive Examination
2. Hard to invalidate: Must show 6 views published

Design patent cannot be granted if it's identical or similar to a design which:

1. has been publicly disclosed in publications in the country or abroad, or
 2. has been publicly used in the country
- (Article 23 of the Chinese Patent Law)

Design Patent Case Study



- This truck is:
- a. Toyota Tacoma
 - b. Nissan Frontier
 - c. Mazda B3000
 - d. None of the above



Design Patent Case Study Cont'd



Will the REAL Nissan Frontier
please stand up...

Design Patent Case Study Cont'd

The missing link



Design Patent Case Study Cont'd



It's not over yet...



Is Anybody Listening?



Trade Secretes in China

DON'T COUNT ON IT!

“The average employee aged 25-35 is now likely to stay at a company for just one to two years”

Mercer Human Resources Consulting

Trade Secret Case Study

GM v. Chery Motor Company



Chevy Spark



Chery QQ

Trademarks in China



MONT 
BLANC

Trademark Case Study (1)

TOYOTA v. GEELY GROUP



Geely Merrie

Trademark Case Study (2)

Honda Motor v. Chongqing Lifan Industry

Lifan sold motorcycles under the name **Hongda**



Honda ASP \$2400



Hongda ASP \$600

Trademark Case Study (2) Cont'd

WHICH ONE IS IT?

HONDA



OR
HONGDA

Honda's Request \$1.5 M
Court Award: \$177,600

Trademark Case Study (3)



星巴克



Copyrights In China

More lucrative than, yes, Cocaine trafficking...

- *According to a study carried out by the Motion Picture Association of America (MPA), the average markup on pirated goods is 1150%, far beyond those for heroin (360%) or even cocaine (1000%).*
- *In China it costs about \$0.13 to make a DVD, which normally sells for about \$1.00 to Chinese, higher to foreigners.*
- *A friend who is a newspaper reporter in Wuhan saw the Band of Brothers DVD for 7 RMB. She offered 6 RMB, which the seller accepted. In the US it costs \$49.99, which is 400 RMB.*
- *In Shanghai one can get Windows, MSOffice, Adobe Photoshop for under \$10 each.*

Copyrights Case Study



The screenshot shows a web browser window with the URL <http://www.116.com.cn/116/2006home/index.shtml>. The page features a large advertisement for the movie "The Pacifier" starring Vin Diesel, with the text "WIDESCREEN From the Director of 'Bringing Down the House'". The ad includes the Walt Disney Pictures logo and the text "vin DIESEL is the PACIFIER". Below the ad are navigation buttons for "云南卫视", "浙江卫视", and "重庆卫视".

The sidebar contains a search bar, a "今日头条" (Today's Headlines) section with a link to "胡锦涛考察奥运工程建设", and a "门户网站" (Portal Sites) section with links to various channels like "直播电视", "电影频道", "新闻频道", etc. A large, tilted stamp with the text "FINE \$11,140" is overlaid on the right side of the page.

Strategy

PARTNERING WITH THE ENEMY

- Cooperate with valid competitors for improved enforcement

"We do not regard the other studios as competition like in other markets. We regard them as partners."

Edward Cheng, marketing director at CAV Warner

- Partner with Best Counterfeiter and make them your enforcer

French La Coste partnering with Hong Kong's La Coste

Strategies For Fighting Back

Market Share Strategy

Harry Potter and the Goblet of Fire and Poseidon









- *Dubbed in Chinese*
- *Release prior to worldwide distribution*
- *Priced at about 1/10th of worldwide price*

Progressive Value Strategy

- *Normal Edition \$1*
- *Silver Edition \$3*
- *Gold Edition \$4*

Should You Do Business In China?

APPLYING GAME THEORY

		COMPETITOR	
		Yes	No
YOU	Yes	 	 
	No	 	 

Take Aways

- IMPLEMENT AN IP STRATEGY ASSUMING THAT YOU WILL BE ABLE TO ENFORCE IN CHINA
 - *IP enforcement is possible in China – even by foreign companies*
 - *Current atmosphere in major Chinese courts is pro-IP owners*
- REGISTRATION OF RIGHT IS ESSENTIAL
- MAKE USE OF DESIGN PATENTS AND UTILITY MODELS
 - *Especially effective against parts suppliers*
- CONSIDER TREATING COUNTERFEITERS AS COMPETITORS
 - *Consider implementing strategies as if you fight low-cost competitor*
 - *Consider partnering with or licensing a Chinese company – they may be your best enforcer*
- BEWARE OF TRAPS:
 - ***China is a first-to-file jurisdiction – file NOW***
 - ***Sales outside of China cannot be used as prior art***
 - ***Design patents are very hard to invalidate***

Media about China



The screenshot shows a Microsoft Internet Explorer browser window with the address bar displaying <http://times.hankooki.com/page/opinion/200508/kt2005080717373754050.htm>. The page content is from **THE KOREA TIMES**, specifically the **Opinion** section. The main article is titled **Chinese Counterfeit Goods** with the sub-headline **Governmental Must Protect Intellectual Property Rights**. The article text discusses the challenges Korean firms face in China due to counterfeit goods, mentioning that these goods are crowding out genuine products and that the government should step in. A sidebar on the right lists headlines such as "Seoul Promptly Perceives Nuke Test" and "Chinese Top Foreign Crime Totals". The browser's taskbar at the bottom shows several open windows, including "The Korea Time...", "http://media.Fa...", and "News about Co...".

It's all a balancing act...
THANK YOU

