

# CHINESE LEGAL ISSUES FOR BEGINNERS

# 中国法制问题简介

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China Business: Taking the Next Step

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## 知识产权 - 简介 – Intellectual Property - Introduction

- Many foreigners believe that their intellectual property cannot be protected in China
- Consequently they are reluctant to register their IP rights in China,
- or even to do business in the PRC

## 知识产权的简介- IP Introduction – 基本见解 Basic Advice

- China has IP laws that meet international standards
- Chinese courts do enforce IP rights, and particularly IP rights held by foreign parties
- The PRC does have a “wild west” economy
- To a large extent the threat to IP from counterfeiters can be costed and managed

## 简介 - Introduction - 假冒伪劣 - Counterfeiting

“... a tumultuous period in which the rigid hierarchies of colonial times finally dissolved, replaced by the more fluid social order of a democratic commercial society. Self-fashioning and self-advancement slowly became a viable way of life...”

Stephen Mihm, *A Nation of Counterfeiters*, p.24

# 法院及知识产权的实施

## Courts & IP Enforcement

Lego Case - 英特莱格公司 (INTERLEGO. AG) v. 可高 (天津) 玩具有限公司, Beijing 2002

Lego was successful under design patent and copyright law

Beijing Higher People's Court stated:

可高公司的产品确有抄袭之嫌，但同时也应看到英特莱格公司的上述玩具积木块艺术创作程度确实不是很高，与典型的实用艺术作品在艺术创作程度上尚有一定差距，一审法院出于平衡利益关系的考虑，作出上述认定是合理的，本院予以支持。

(While the Kegao Company's products really have the smell of plagiarism, we should also consider that the level of artistic creation in the English Interlego Company's products is not really very high and there is a certain disparity between it and typical practical works of art. The court of first instance struck a reasonable balance of the interests and we will support it.)

# 中国法院的涉外纠纷

## Foreigners in the People's Courts

浙江蓝野酒业有限公司 诉 上海百事可乐饮料有限公司  
(Zhejiang Blue Wild Liquor Company v. Shanghai Pepsi  
Cola) May 24, 2007



# 中国法院的涉外纠纷

## Foreigners in the People's Courts

- December 14, 2003 Chinese co. applied for the trademark “蓝色风暴” (BLUE STORM) – registered January 24, 2006
- July – August 2005 Pepsi used the same mark in a promotional campaign
- Pepsi won in the court of first instance on grounds that use as a slogan was not used as a trademark
- On appeal Zhejiang Higher People's Court awarded 3 million yuan (\$393,576.00 USD) to the Chinese company

# 合同法 – Contract Law

- Many foreigners believe that contracts cannot be enforced in China
- Consequently they do not bother to have contracts when they do business in China,
- or avoid doing business in the PRC



# 合同法 – Contract Law

- PRC Contract Law (中华人民共和国合同法)  
adopted in 1999
- Based on the section on obligations in the  
Bürgerliches Gesetzbuch (German Civil Code)
- Judges tend to hold parties to their franchise  
contracts more than in North America

# 合同法 – Contract Law

## Some Key Points:

- required to negotiate in good faith (诚实) – Art. 42
- Improvements on your technology by the Chinese party must be paid for
- Non-competition covenants with employees are enforced if payment is made

# 合同法 – Contract Law

## More Key Points:

- Contract can be in English only – but for practical purposes it is better to do it in Chinese
- Free to choose governing law, including foreign jurisdictions
- Free to choose arbitration instead of court

# 法院仲裁 – Dispute Resolution

- Many foreigners believe that going to court in China is expensive and time consuming
- Consequently they are reluctant to enforce their contracts in China,
- or even to do business in the PRC

# 法院仲裁 – Dispute Resolution



# 法院仲裁 – Dispute Resolution



# 法院仲裁 – Dispute Resolution

## Enforcement of Contracts –

– World Bank – [www.doingbusiness.org/EconomyRankings](http://www.doingbusiness.org/EconomyRankings)

– Based on procedures, time and cost

» Hong Kong – 3<sup>rd</sup>

» France - 6<sup>th</sup>

» Germany – 7<sup>th</sup>

» United States – 8<sup>th</sup>

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» Russian Federation – 19<sup>th</sup>

» Australia – 16<sup>th</sup>

» Canada – 58<sup>th</sup>

# 法院仲裁 – Dispute Resolution

## Typical Trade-mark Infringement Action in China

- Time: collection of evidence in October – appeal judgment issues in July – 9 months
- Cost: about \$14,000 USD in legal fees, investigation and notarization costs extra

# 法院仲裁 – Dispute Resolution

## Civil Procedure Law (民事诉讼法)

- Foreign related cases start in the Intermediate People's Courts
- No discovery – you must collect your own evidence
- Interim injunctions and motions are not common
- But asset seizures before trial are common and not difficult

# 法院仲裁 – Dispute Resolution

- Chinese courts do not enforce foreign judgments (except based on reciprocity, and Hong Kong judgments)
- They will enforce arbitration awards
- Parties often use Hong Kong or Singapore arbitration

# 法院仲裁 – Dispute Resolution



# 法院仲裁 – Dispute Resolution





# 法院仲裁 – Dispute Resolution



# 法院仲裁 – Dispute Resolution



# 最佳做法 – BEST PRACTICES

1. Register your intellectual property in China
2. Prepare a business plan for China
3. Do an audit of the IP needed in China
4. Find the right partner – conduct due diligence

# 最佳做法 – BEST PRACTICES

## 5. Structure the deal carefully

### 5. Develop a good contract

- General terms
- IP issues
- Non-disclosure and non-competition
- Names of parties and other technicalities
- Choice of law, venue and forum

# 最佳做法 – BEST PRACTICES

7. Monitor developments after closing

8. Develop you 关系 (guanxi) or relationships

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