

Protecting Your IP at Trade Fairs in South-East Asia

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Trade fairs in South-East Asia provide European SMEs with the opportunity to present their innovations and ideas to potential business partners and customers whilst also allowing them to learn from and collaborate with other innovators. There is, however, a risk in that disclosing their innovations to the public may leave them exposed to third parties copying and infringing their IP. Infringement of innovations may not necessarily be straightforward ‘counterfeiting’ – i.e. exact product, packaging and brand imitation. It is more likely that competitors could be using, intentionally or otherwise, a certain part of a European SME’s product or innovation. It is therefore advisable to be as diligent as possible and to get to know your competitors’ products.

SMEs planning to attend trade fairs should therefore be aware of potential for IP infringements and of the measures that they can take to protect their products. A practical and realistic approach must be taken when preparing for and attending trade fairs. IP owners must also be patient and pragmatic, as it is unlikely that immediate action can always be taken against the infringer. There are, however, steps that IP owners can take before, during and after the event to best protect their IP.

Preparing for a Trade Fair

Before actually attending the trade fair, SMEs should protect their IP assets in the country where the fair is taking place. Having a registered right puts the IP owner in the best position, as they will be able to prevent violations and adopt effective measures against the infringers. Therefore, it is essential that the SMEs incorporate an IP protocol into their normal business operations. It means that the SMEs should regularly check for their own IP assets and then consider whether and where to apply for registration. This will help to avoid situations, where whilst exhibiting at a trade fair, an SME may realize that they lack sufficient IP protection. However, since the registration process may require a long time, it is important to know that an application for registration in the country of interest is a sufficient form of protection. In fact, the right-holders are usually able to enforce their application (as well as registered IP rights) against infringers (for example, to obtain an injunction to immediately cease production or distribution of an infringing product or to obtain their seizure).

When preparing materials for the exhibition, it is wise to notify the public – where appropriate – of IP ownership as this may discourage potential infringers. This can be done by using the following symbols and phrases:

©	This can be combined with the year of creation or publication to assert copyright ownership in works such as brochures, websites, software, pictures, music, etc.
TM	If an SME has applied for a trade mark but it is not yet registered, or even if the SME has not applied but is using the trade mark, the TM abbreviation can be used to assert rights over the trade mark.
®	This symbol can only be used for registered trademarks. It is a criminal offence to use this symbol if the trade mark is not registered, as it may be deceiving for consumers.
Patent Pending	If the patent application has been made but has not yet been granted, this phrase can be used.
Patent WO/12345678	Once the patent is granted, usually the patent number and jurisdiction are used to show where the patent has been issued.

It is also a good idea to research the trade fair organizer’s material as much as possible, in order to know what actions a company could take in case of an infringement. For example, it is worth taking the below steps in advance:

- a. Checking for an IP or business centre that may be able to provide assistance or advice during the trade fair and review carefully the terms and conditions of the trade fair.
- b. Liaising with a local attorney (through a Power of Attorney) and providing them with evidence showing the ownership of the IP rights, so that if necessary, the legal action can be undertaken swiftly.
- c. Checking the list of exhibitors and making a note to check certain stands.

Attending Trade Fairs

SMEs wishing to demonstrate their innovations during trade fairs should keep in mind that most South-East Asian countries operate under the absolute novelty requirements when it comes to registering patents. Displaying products at trade fairs can (but not in all circumstances)

constitute 'publication' which may affect their novelty value. It means that SMEs should not fully expose innovations, which they have not yet filed a patent application for, in all the countries they wish to have their innovations protected. In most South-East Asian countries companies can disclose certain elements of their inventions, but it is advisable to check with a patent lawyer or patent agent if the company is uncertain if the exhibition may prevent the company from obtaining a patent in the future. Some South-East Asian countries like Vietnam, for example, allow for a grace period for inventions that are disclosed at trade fairs, but not all. For designs, it is very important to apply for their registration prior to displaying them to the public in South-east Asian countries.

As infringements at trade fairs are fairly common in South-East Asia, there are a few steps that SMEs could take during the trade fairs to best protect their IP:

1. Save or collect all trade fair material and exhibitor information.
2. Take as many photos as you can.
3. Gather as much technical data as possible about your competitors and their products.
4. Do not threaten legal proceedings without the advice of a lawyer. Groundless threats could result in you being countersued.
5. If you suspect an infringement, immediately seek competent advice.
6. Involve the organizers of the trade fair if you believe it would assist your case.

Enforcement: Dealing with Infringements at Trade Fairs and after Trade Fairs

If an infringement is confirmed at or as a consequence of a trade fair, there are several enforcement options that are recommended. These include:

- a) A notification letter. This letter simply provides the infringer with notice of a company's IP rights. Companies may wish to also include a statement that they would be willing to discuss the issue or license the IP to them. These are seen as a softer approach and are often used when there is not strong evidence of infringement. It may be possible to send such a letter on the letterhead of the IP owner (i.e. without instructing lawyers).
- b) A 'cease and desist' letter. This letter will usually threaten legal proceedings and demand that the infringer ceases and desists from infringing the IP in question. It is possible to ask for damages and legal costs in such letters. The letter may be accompanied by a form of settlement agreement known as 'undertakings' or "declaration of commitment" to contractually bind the infringer by the settlement terms. These letters require the assistance of specialized attorneys or lawyers.
- c) Raid or 'search and seize' actions. These are usually done *ex parte*, i.e. without informing the infringer, so as to take them by surprise. At the same time, in Thailand for example,

in the case of patent infringement, the court, authorities or police will most likely not be willing to seize the goods, since there may be complex factual and legal issues involved. However, products infringing trademarks or copyright would justify such action in Thailand and in most South-East Asian countries.

- d) Investigate the infringer. It may be that the infringer is sourcing infringing materials from a larger supplier that may reside in another country. It may be that an investigation would help to provide the SME with information about their customers and network. A local lawyer or business partner may be able to assist with an investigation. There are many investigation companies specializing in IP across Southeast Asia.
- e) Issue legal proceedings. This is often the last resort. Legal actions are not as costly in Thailand Indonesia or Vietnam as in Europe, but they are still a significant drain on resources, particularly for an SME. Criminal, civil, and administrative actions may be available to the IP owner for injunctions and damages, though awards from the court to recover legal costs are generally very rare in Thailand, Indonesia or Vietnam and cases are generally only taken seriously where there is evidence of wide scale infringement. Local legal advice is essential when considering such options.
- f) Alternative dispute resolution. Some countries in Southeast Asia like Malaysia and Thailand, for example, will offer mediation or arbitration services, which can be an efficient way of resolving certain IP disputes. The arbitration services offered by the Singapore International Arbitration Centre (SIAC) are considered to be the most viable and popular option for lawyers based in South-East Asia.

Take-away Message

Trade fairs present huge opportunities for collaboration and business, but at the same time, present a degree of risk, as SMEs face IP related problems like theft of IP or copying and counterfeiting. With a robust and well-prepared approach to trade fairs, IP value can be maximized to ultimately benefit the IP owner.

SME IPR Helpdesk Team

*(question@southeastasia-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive **free and confidential first-line advice** within **3 working days**.*

The South-East Asia IPR SME Helpdesk is co-funded by the European Union.

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