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Chinese Agreements

The importance of respecting local practice

With an increasing amount of manufacturing being undertaken in China and the prevalence of joint ventures with Chinese businesses, a recent decision by The Beijing No. 1 Intermediate People's Court comes as a reminder of the importance of respecting local practices when entering into agreements with Chinese companies.

Facts

The Claimant was a Taiwanese company that had used the mark ZHENGLIN & device for a number of years. The principal of the Claimant, Lin Ken, incorporated a Chinese company in the 1990s with local partners and registered the trade mark in China.

Following a disagreement, Lin Ken was removed from the Chinese company. He disputed this and refused to hand over the corporate seal of the company. (The corporate seal or "chop" of a company is an important sign of authority). The Claimant also claimed that the Chinese company should stop using the ZHENGLIN & device mark because the right to use it was withdrawn following the expiry of a Trade Mark Licence from the Claimant. The Claimant lost.

Decision

Under Chinese Court rules, the Defendant has a right to demand that original documents be filed with the Court. Further, photocopies are not admissible evidence unless they can be verified against the original.

Lin Ken could only supply copies of the agreements and documents that he wanted to rely upon in Court. He claimed that the original documents were in his office at the Chinese company, but that he could not access them. As there is no provision for discovery in China,

the Defendant is under no obligation to produce evidence that may assist the Claimant in proceedings.

Conclusion

This case is a reminder that when entering into agreements with Chinese companies (including joint ventures), local standards need to be observed in executing agreements, which are often more stringent than those in the West. We suggest following these rules if possible:

- The parties should have the executed agreement notarised in China;
- The legal representative (in Chinese)

法定代表人

of the Chinese company should sign, as they can be held personally responsible for the actions of the company;

- Use a seal or "chop" (get one if your company does not already have one);
- All IP licences should be recorded at the Chinese IP Office; and
- Retain original documents as copies may not be acceptable to the Court.

For further advice or more information on this issue, please speak to your usual contact at UDL.

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Hot Topic



Contact Us

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