



Intellectual
Property
Office



British Embassy
Beijing



China-Britain
Business Council
英中贸易协会

Intellectual Property & Architecture in China

Every effort has been made to ensure that the information provided is accurate, however we accept no responsibility for any errors, omissions or misleading statements in this factsheet. This information is written in general terms and should be used as a guide only. It should not be used as a substitute for professional advice.

The fast-growing Chinese economy – including rapid urbanisation – offers opportunities for British architectural design expertise. But the Chinese architecture industry also features several sources of intellectual property (IP) risk. Identifying and mitigating these risks can be an important element of succeeding in the Chinese market.

Architecture & IP rights

IP protection for architectural designs in China most commonly relies on **copyright** and related rights. Protection is available under the Chinese Copyright Law for “architectural works”, most commonly drawings and models. Works should be original, replicable and aesthetic. The use of raw materials; elements of designs common to other buildings of public spaces; and building interiors are generally not protected by copyright law in China.

Design rights can provide protection for novel and aesthetic external appearances of buildings.

Patents or utility models could be available for functional and inventive elements of buildings. In order to satisfy the conditions that patents and designs are novel (i.e., new), patent, utility model and design applications would potentially need to be made before buildings were constructed or models of the building were published/exhibited. For

general information on patents, utility models and designs in China see our *IP in China* factsheet.

Trade mark protection can be obtained for company, building or other names. Trade marks typically indicate the source of products and can help build a reputation amongst potential business partners and commissioning entities.

Bidding processes & contracts

Participating in bidding procedures can present risks to architectural design companies. Reported problems include tender processes being used to acquire designs to be subsequently pursued by lower-cost design and construction companies.

Contracts and tender rules can also be a source of risk, with bidders typically required to waive rights to works. It is difficult for most architectural design companies – with the exception of the largest, globally-famous brands – to negotiate retention of rights.

Companies should carefully consider participating in tenders where risks may be considered particularly high. Due diligence on commissioning entities should be undertaken to understand any previous record of bad-faith acquisition of designs or other poor treatment of designers.

Copycat companies

Several cases have been reported in China of domestic companies passing themselves off as a famous international architecture company in order to participate in a tender. This can include using trade marks and marketing materials that are identical or similar to those of the international brand. Confusingly similar company names are registered with local authorities.

Copycat companies can present a serious risk to the reputation of genuine companies and jeopardise chances of success in future tender processes. Copycat companies can be tackled by challenging the registration of company names using procedures at the local Administration of Industry and Commerce (AIC). Trade mark infringement action may also be appropriate.

Enforcement

Infringement of rights in architectural works typically takes the form of unauthorised reproduction or distribution of drawings, models or designs. Cases involving infringement of rights in architectural works have been relatively rare in Chinese courts, due in part to the high technical knowledge required to develop an infringing design. Infringements of architectural works in China can include reproduction of drawings and designs in 3-dimensional form.

There are several channels for enforcing against infringements of IP rights in China. Further information is in our *IP in China* factsheet. Advice should be sought from an experienced China lawyer before taking action in any specific case, including before issuing cease-and-desist letters.

A common approach for cases of infringement of rights in architectural works is to file a case with the civil courts. A major challenge in enforcing rights to architectural works in China is proving ownership of the rights. Copyright in architectural works is generated upon creation of the work. Date and name stamps on architectural drawings or models can be considered evidence of ownership. Copyright recordal with national or local government agencies can also be considered. Although not a strict requirement a copyright

recordal certificate can be a useful – though rarely sufficient – contribution to proving ownership of rights to a work.

Chinese courts have strict procedural requirements for documents submitted to the court. Any evidence introduced from overseas must be notarised in the country of origin and authenticated by the relevant Chinese Embassy or Consulate. Documents in foreign languages must be translated into Chinese by an approved translator in order to be admitted to the court. Detailed documentation to help demonstrate ownership of works should be kept throughout the design process. Legal counsel experienced in satisfying the evidence requirements of Chinese courts should be used.

In previous cases, Chinese courts have also aimed to strike a balance between the rights holder and the infringing party. Low values are usually attributed to copyright in designs, especially in comparison to the perceived damage of stopping a large construction project. A typical outcome is for courts to order an infringer to make modifications to a design. Damages awarded by Chinese courts are rarely compensatory. Awards are usually based on statutory damages rather than on calculations of actual damage to the rights holder or profits made by the infringer.

For more information – or to arrange a discussion of a particular case based on our experience working with other companies in China – please contact commercialmail.beijing@fcdo.gov.uk.