

**INTELLECTUAL PROPERTY LAW -
PROACTIVE STEPS FOR IP DEFENSE
DURING TRADE FAIRS IN GERMANY**

**Michael WERNER
John EASTWOOD**

INTELLECTUAL PROPERTY LAW – PROACTIVE STEPS FOR IP DEFENSE DURING TRADE FAIRS IN GERMANY

Exhibitions are hot spots for companies to show customers their latest products and getting, keeping or expanding their market shares. Protection of a company's own IP rights against infringements by others is a standard practice for companies participating in an exhibition. The German legal system does afford companies facing possible allegations of infringement an opportunity to defend themselves, but such defenses must be offered proactively with some foresight.

Take the following scenario: Company Z wants to participate in an exhibition in Germany. With the publication of the exhibition catalogue, its competitors will have a chance to see which products shall be shown. One competitor believes that one or more of Company Z's products infringes its IP rights. In order to prevent the display of Company Z's goods, the competitor files to request a preliminary injunction against Company Z. The respective court will normally act within a very short time, reviewing the application and may grant the application on a summary review solely based on the claims of the competitor if the court believes that there may be grounds for an IP infringement. The competitor takes the decision, completes the serving and enforcement process, quickly resulting in Company Z's goods being removed from the exhibition.

Of course the Company Z may take legal action against the decision, but by the time a court decision is reached, the exhibition may already be over. The results can be devastating, considering that some industries utterly depend upon only one or two major international shows to get through the coming year. Company Z has already paid substantial amounts for its booth space, airline tickets, hotel rooms, as well as spent considerable personnel and managerial resources in preparing for the event, all for nothing. The anticipated rewards of selling products and expanding its market reach have been replaced with the sour taste of products sitting in a court warehouse and a damaged company reputation.

What went wrong? Could Company Z have done something to prevent these events?

German law offers one tool to reduce the risk of such injunctions, the protective letter "Schutzschrift". The protective letter does not formally exist in the German legal codes, but it was developed through jurisprudence and recognized by the courts in Germany. The aim of the protective letter is to stop an anticipated move for an injunction before it is even filed – in essence, a company that suspects its competitors may take legal action can pre-file its defenses with the court. The respective court then must at least see the defendant company's arguments and take them into account before making a decision.

This eliminates the usual substantial risk that the court will make an ex-parte decision based solely on the arguments of a company's competitors. .

Even if there is no need for a protective letter or if the protective letter comes too late, there are other proactive steps to reduce the consequences of a seizure. It is important to work with German legal counsel to set up a protection plan for every stage of the trade fair, from pre-fair preparations until departure from the show, including the possibility of having legal advice and representation ready if needed during the exhibition. IP litigation cases always have two sides to a story, and it is valuable for companies participating in major industry shows to ensure they have a chance to defend themselves.