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Beware the counterfeiters you know

The old expression that one should “keep your friends close but keep your enemies closer” comes from Michael Corleone in *The Godfather Part II*, although it speaks to an eternal sort of wisdom that gets people regularly misattributing the quote to Sun Tzu and Machiavelli. Here, I’d like to discuss a bit about the longstanding counterfeiting problems caused by business counterparts. As we’ll get to in a moment, in the world of intellectual property, it’s perhaps wise to keep your friends close because they can swiftly become your worst enemies.

1. The One-Stop Shop from Hell

I wish I had a 10 NT coin for each time a new European entrant to the Taiwan and Greater China markets told me that that they didn’t really need any help with their trademark filings because they already “worked that out” with their sourcing agent, distributor, or whatever. Sure, it’s great to have somebody you trust helping out on the ground to save a few dollars, but having your local distributor run about handling something so legally central to your company and its public reputation is a bad way to save money.

Why? First off, chances are the trademark application is badly drafted, only covering part of the product line or part of the scope of the planned-for business activities. We’ve seen filings that completely omitted key products and service activities because even a well-intentioned trading counterparty may not understand your business well. Local trading counterparts often don’t know how to respond to queries from the Taiwan IP Office (TIPO), meaning that they miss deadlines or don’t know that some of these TIPO queries can be easily enough resolved.

One of the worst mistakes is allowing the local partner to apply for trademarks in their own name -- suddenly the brand that you've been building up in markets around the world is now held by some guy you're doing business with. The justifications for this have varied from: "he said that he could save me a lot of money by doing this" to "I thought it would help him feel he had a stake in our success" through to "he said he was going to file for it in my name". None of those are good ideas.

And if the local partner gets the trademark registered in their name, you're really stuck in business with them no matter whether they do a good or horrible job. After all, how are you going to have a smooth exit strategy if the other party is holding onto all your Taiwan trademarks? That's some pretty heavy leverage given that they may be able to use your own trademarks to keep you from making or selling your own products for quite some time. We've seen numerous companies only realize that their local partner was holding all the Taiwan trademarks once they started to explore the idea of breaking up and moving on to a new distributor or sourcing agent.

It's best to keep in mind the whole notion of "intellectual property" as property -- it is an asset, and it is worth something. You don't just give that up when every one of your products is going to be stamped with it. Your brand is a bit like a nice car -- you entrust its well-being to skilled mechanics and not a bunch of well-meaning kids with hammers and sandpaper.

2. A Failure to Supervise

Another key problem comes up, especially in licensing and manufacturing deals in

which a party enters the Greater China market and assumes that they never need look at any further documents, spend time visiting factories, or putting a critical eye towards the data and information about their manufacturing partners. Sure, after a few dusty weeks spent running about warehouses and factories, one might well want to set down that and forget about it, but there's a bit of normal human psychology that fast comes into play.

When a local manufacturing partner starts to realize that you're not paying attention, that's when they start to evaluate their own rational self interest in the form of under-reporting, running extra lines of unauthorized product, inflating costs, or other such games. Typically, such situations continue onwards until finally a day of reckoning comes where the European brand owner terminates the local manufacturer, whereupon the local manufacturer speedily moves on to making straight-out counterfeits of the product.

But was this really necessary? Sometimes problems are unavoidable, but the speed and magnitude of problems is often directly related to the extent to which the relationship is not monitored. When a manufacturing partner realizes that nobody's really reviewing the manufacturing data or visiting to conduct inspections, then it leaves them (or their individual managers and staff) open to a lot of financial temptations.

Time and again, we've found that the pool of counterfeit manufacturers includes formerly authorized manufacturers, whose exact skills in making authorized products in the past make them able to make dangerously close counterfeits of products in the future.



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3. Recommendations

It's important to remember that today's great business relationship may sour in the future. After all, the honorable laoban running a factory, sourcing agency or distributorship today may retire, turn over the company to his ne'er-do-well son, sell it on to completely new strangers or else simply face new realities in terms of the profit margins that changes his attitude towards doing business with you. All of these developments can mean that decisions made long ago can have a huge impact on what happens to the future of your product.

Your intellectual property must stay firmly in your control, and no temporary "cost savings" are worth it if you end up with bunch of poorly drafted trademark registrations or even registrations that don't officially even belong to you.

Relationships with partners up and down the supply and distribution chain should be maintained carefully, and concerns should be raised at an earlier stage to ensure that your local partners understand that you're watching them carefully. If you avoid difficult conversations, it only leaves your local partners with the sense that you're not paying attention and, thus, increases your business risks. ■