

Successful Products – Unwelcome Consequences

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Dyson's bladeless fans were launched in October 2009; copies were on the market by May 2010.

All but a very few have been manufactured in China. Infringing products spread swiftly from China to other countries.

Sold through:

- Trade fairs – especially Canton Fair
- Mass emails
- Listings on Alibaba.com and MadeInChina.com
- Bespoke websites

First copies were virtually exact replicas (but not trade mark).

Designs morphed over time.

Management started in-house: now have a China-specific team plus a network of attorneys around the world managed by a UK-based lawfirm.



YOU NEED INFORMATION

- Private investigator network in China
- Is the target manufacturing or selling?
- Do they exhibit at trade shows?
- Can you buy a sample?
- What is their capacity?
- Look online for the product they produce
- Try to find individuals who are running the company
- Try to get a notarised purchase of the product being offered
- Factory inspections are quite normal in China

Canton Fair

- Held April and October in Guangzhou
- Can get notaries in to certify what is being offered for sale
- Collect evidence: photographs, brochures, business cards
- IP Complaint Offices – run by Guangzhou IP Office
- Can get infringing products taken down from stands in show

Many other trade shows have similar arrangements.

YOU NEED EVIDENCE

Pretty much everything has to be notarised

You want:

- A sample product
- Evidence of who has sold it – websites, receipts, brochures, etc
- Your IP rights
- Verification that the IP right is valid

Might need to:

- Apply to the court to have a raid carried out which will produce evidence
- Carry out a seizure at a port to detain goods destined for export

Lawsuits can be quite quick in China.

But it's easy for a defendant to delay them by:

- Moving location
- Filing jurisdictional challenges
- Failing to attend hearings
- Filing invalidation actions

Decisions can also take a long time to be issued after the hearing.

Settlements are sometimes useful.

You can include in a settlement:

- Penalty clauses for repeat infringements
- Undertakings to destroy injection moulds
- Undertakings from individuals

Be prepared to forego at least some of your damages.

Don't expect massive damages anyway. Or costs.

- Make your product difficult to reverse-engineer
- Use Chinese utility model patents for speed; get evaluation reports done immediately on grant – but watch for expiry when invention patent is granted
- Litigate if you have to – but settle if you can
- Many-pronged attacks are good (courts, marketplace websites, trade shows)
- Tackle customers in other countries
- Use Customs if you can
- Make sure there is someone with a global viewpoint to make connections – sometimes across continents