



**NCCAVS  
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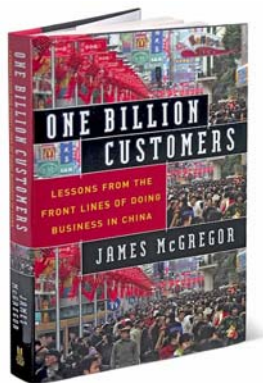
# **INTELLECTUAL PROPERTY AND COUNTERFEITS IN CHINA**

Presented by

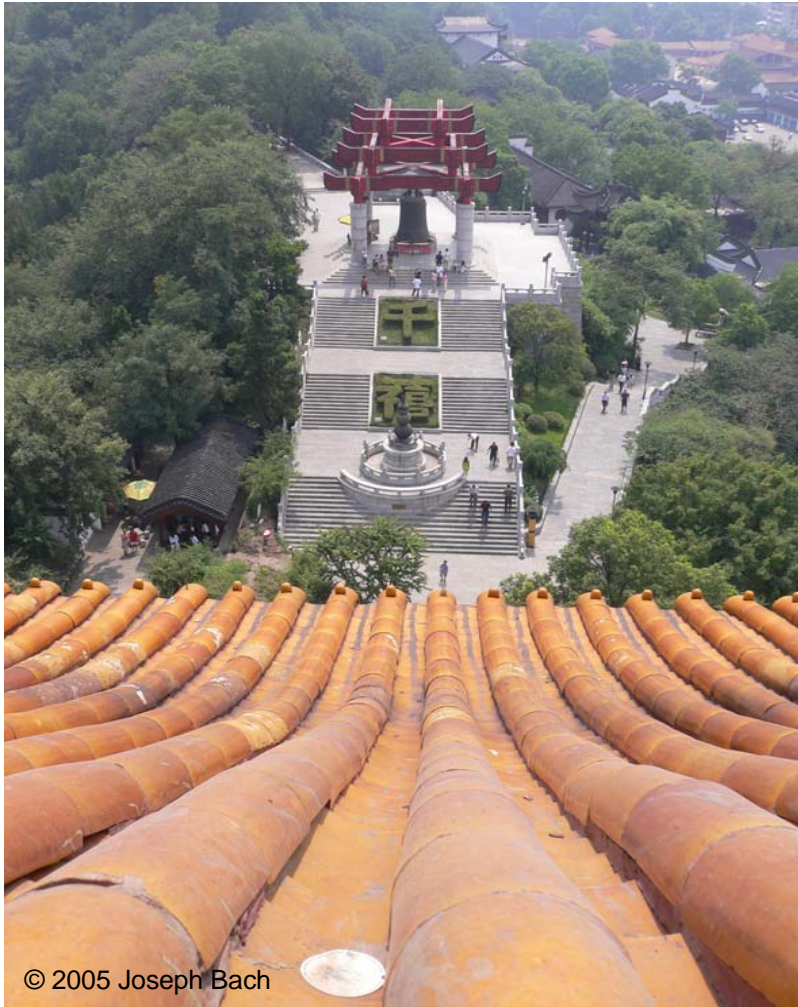
***Joseph Bach***

***Sughrue Mion PLLC***

November 14, 2007



## China IP Scene



- Does China have IP law?
  - Are they good laws?
  - Can they be enforced?
  - Are they being enforced?
- Etc...

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# *Perceptions*

## **Global Perception:**

*“The Chinese are copying our IP and Chinese enforcement favors the local companies.”*

## **Emerging Chinese Perception:**

*“In their quest to ease world pressure, authorities favor foreign companies.”*

## **Examining the Reality:**

*Design Patents, Trade Secrets, Trademarks, and Copyrights cases.*

# *Knockoffs, Knock it off*

***Beijing's defense of its Olympic logo shows it can stop the counterfeiters.***



# *Design Patents in China*

## *Easy to get, hard to invalidate!*

1. Easy to get: No Substantive Examination
2. Hard to invalidate: Must show 6 views published

## *Design patent cannot be granted if it's identical or similar to a design which:*

1. has been publicly disclosed in publications in the country or abroad, or
  2. has been publicly used in the country
- (Article 23 of the Chinese Patent Law)

# *Design Patent Case Study*



- This truck is:
- a. Toyota Tacoma
  - b. Nissan Frontier
  - c. Mazda B3000
  - d. None of the above



## *Design Patent Case Study Cont'd*



Will the REAL Nissan Frontier  
please stand up...

## *Design Patent Case Study Cont'd*

The missing link



# *Design Patent Case Study Cont'd*



It's not over yet...



# *Is Anybody Listening?*



## *Trade Secretes in China*

***DON'T COUNT ON IT!***

**“The average employee aged 25-35 is now likely to stay at a company for just one to two years”**

Mercer Human Resources Consulting

# *Trade Secret Case Study*

## **GM v. Chery Motor Company**



Chevy Spark



Chery QQ

# *Trademarks in China*



**MONT  
BLANC** 



# Trademark Case Study (1)

TOYOTA v. GEELY GROUP



Geely Merrie

## *Trademark Case Study (2)*

Honda Motor v. Chongqing Lifan Industry

Lifan sold motorcycles under the name **Hongda**



Honda ASP \$2400



Hongda ASP \$600

## *Trademark Case Study (2) Cont'd*

*WHICH ONE IS IT?*

HONDA



OR  
HONGDA

Honda's Request \$1.5 M  
Court Award: \$177,600

## Trademark Case Study (3)



星巴克



# Copyrights In China

More lucrative than, yes, Cocaine trafficking...

- *According to a study carried out by the Motion Picture Association of America (MPA), the average markup on pirated goods is 1150%, far beyond those for heroin (360%) or even cocaine (1000%).*
- *In China it costs about \$0.13 to make a DVD, which normally sells for about \$1.00 to Chinese, higher to foreigners.*
- *A friend who is a newspaper reporter in Wuhan saw the Band of Brothers DVD for 7 RMB. She offered 6 RMB, which the seller accepted. In the US it costs \$49.99, which is 400 RMB.*
- *In Shanghai one can get Windows, MSOffice, Adobe Photoshop for under \$10 each.*

# Copyrights Case Study



# Strategy

## PARTNERING WITH THE ENEMY

- Cooperate with valid competitors for improved enforcement

"We do not regard the other studios as competition like in other markets. We regard them as partners."

Edward Cheng, marketing director at CAV Warner

- Partner with Best Counterfeiter and make them your enforcer

*French La Coste partnering with Hong Kong's La Coste*

# *Strategies For Fighting Back*

## **Market Share Strategy**

Harry Potter and the Goblet of Fire and Poseidon









- *Dubbed in Chinese*
- *Release prior to worldwide distribution*
- *Priced at about 1/10<sup>th</sup> of worldwide price*

## **Progressive Value Strategy**

- *Normal Edition \$1*
- *Silver Edition \$3*
- *Gold Edition \$4*

# *Should You Do Business In China?*

## *APPLYING GAME THEORY*

		COMPETITOR	
		Yes	No
YOU	Yes	 	 
	No	 	 

# Take Aways

- IMPLEMENT AN IP STRATEGY ASSUMING THAT YOU WILL BE ABLE TO ENFORCE IN CHINA
  - *IP enforcement is possible in China – even by foreign companies*
  - *Current atmosphere in major Chinese courts is pro-IP owners*
- REGISTRATION OF RIGHT IS ESSENTIAL
- MAKE USE OF DESIGN PATENTS AND UTILITY MODELS
  - *Especially effective against parts suppliers*
- CONSIDER TREATING COUNTERFEITERS AS COMPETITORS
  - *Consider implementing strategies as if you fight low-cost competitor*
  - *Consider partnering with or licensing a Chinese company – they may be your best enforcer*
- BEWARE OF TRAPS:
  - ***China is a first-to-file jurisdiction – file NOW***
  - ***Sales outside of China cannot be used as prior art***
  - ***Design patents are very hard to invalidate***

# Media about China

The Korea Times : Chinese Counterfeit Goods - Microsoft Internet Explorer

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**Chinese Counterfeit Goods**  
Governmental Must Protect Intellectual Property Rights

Korean firms in China have long suffered from the imitation of their products by their local competitors. Now the Chinese-made copycat products are beginning to flood the domestic market, causing serious concerns about industrial damages among local makers. The range of these counterfeit goods has also sharply widened, from MP3 players and cell phones to auto parts and construction materials. In some cases, the forgers even steal company and product names.

This means illegal, fake products are crowding out genuine, legitimate ones. One can imagine the difficulties the Korean firms are experiencing in managing markets and defending their corporate image. For these victims of industrial piracy, blocking the manufacture and distribution of imitation goods has become as important as cutting costs and developing new products. As the job cannot be left to the businesses alone, now is the time for the government to step in.

Currently, a number of Korean companies are frantically trying to ferret out copycat goods, strengthening crackdowns and paying rewards to those reporting fake goods. These counterfeit articles of course wrinkle the original makers' bottom lines. More seriously, however, the imitation goods, despite their similar appearances, are often far inferior in quality, eroding the copied makers' hard-won market recognition. It takes long time to earn corporate fame but only a moment to lose it.

It is hard to find fault with firms in less developed countries imitating those in industrialized nations. A case in point is the Chinese home appliance maker, Haier Group, which has rapidly chased its Korean competitors with TVs and air-conditioners priced far lower than Korean goods with similar quality. But copying designs and technology should be different, as they are

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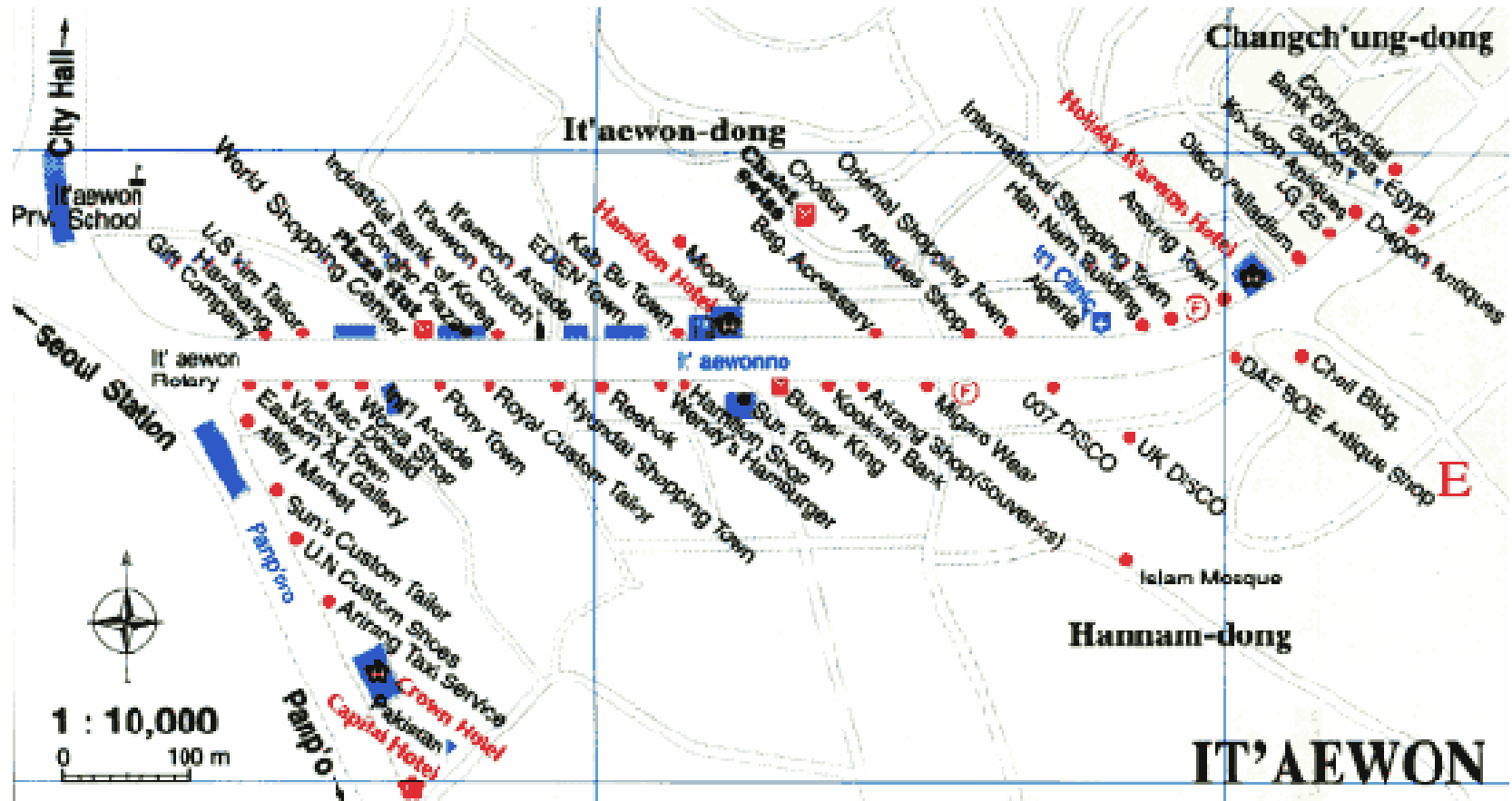
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- Chinese Top Foreign Crime Totals
- Economic Woes Deepen on Nuke Test
- Bus, Subway Hours Extended for Holiday

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# Counterfeit in Korea?



*It's all a balancing act...*  
**THANK YOU**

