

第一环节: 国际贸易和投资的风险管理

Session One: Risk Management in International Trade and Investment

讲题: 国际贸易中保护知识产权的策略

Topic: Strategies to Protect Intellectual Property Rights in International Trade

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Protection of Intellectual Property Rights in International Trade

国际贸易中保护知识产权的策略

- A. Species of intellectual property rights generated in international trade
国际贸易所衍生的各类知识产权
- B. Understanding the nature of legal protection in different species of intellectual property
各类知识产权所得的法律保护的本质
- C. Preventive and protective Measures to be taken in business operation
营运企业中应采取的预防及保护措施
- D. Enforcement of legal rights
法律权利之执行

A. Species of intellectual property rights generated in international trade
国际贸易所衍生的各类知识产权

- Patents for inventions - protects inventions in principles of construction and processes.
发明专利 - 保障富创造性的、可作工业应用的原理及步骤的发明
- Industrial Designs - protects outward appearance of articles.
工业设计 - 保障应用于物品外观的新颖设计
- Registered trade marks - protects signs used to identify the origin or trade connection of goods or services.
注册商标 - 保障用于识别货源或服务供应者的标记
- Unregistered trade names, trade marks, and get-up - protects the goodwill attached to the names or marks from damage.
未经注册而沿用久之商号、商标、及具识别作用的外观 - 保障商誉
- Copyright - protects literary, dramatic and musical works which have been rendered into material form.
版权 - 保障文字、戏剧及音乐作品、免受抄袭
- Trade Secrets and confidential information.
商业机密及保密资料
- Fruits of intellectual effort which are not generally protectable - e.g. ideas, business models, the "feel" and atmosphere of a restaurant.
一般不受法律保护的知识产品 - 如概念、商业模式、商店的环境和气氛

B. Understanding the nature of legal protection in different species of intellectual property

各类知识产权所得的法律保护的本质

- Territoriality and jurisdiction 国界特性及法权
- Patents for inventions 发明专利
 - system of registration 注册制度
 - international protection 国际性保障
 - registrability, examination, validity 可注性、审核、有效性
 - nature of monopoly 专利权的本质
- Industrial designs 工业设计
 - registration and term of protection 注册及保护的条款
 - registrability and nature of monopoly 可注性及专利权的本质
- Registered trade marks 注册商标
 - function of a registered trade mark and effect of loss of function
注册商标的功能及功能丧失之法律后果
 - registration through examination 经审核之注册程序
 - inherent registrability and conflict with earlier marks
商标本身之可注性及与较早商标之冲突
 - nature of monopoly 专利权的本质
- Trade marks, trade names and trade dress protectable by means of passing off or unfair competition 受假冒影射或不公平竞争法保护的商标、商号、商业外观
 - reputation, misrepresentation and damage 商誉、诈称、损失 - 「三位一体」
 - shield or sword 孰盾孰剑?
 - Comparison with rights in registered trade marks 比较注册商标的权益
- Copyright 版权
 - types of protectable works and how protection arises 版权作品的种类及如何获得版权保护
 - registration and territoriality 注册与版权
 - nature of monopoly 专利权之本质
- Trade secrets and confidential information 商业机密和保密资料
 - Nature of protection - equitable duty 法律保护的本质 - 衡平法下的义务
 - Trade secrets and mere confidence distinguished 商业机密和保密资料的分野
 - Species of trade secrets and confidential information 机密之种类
 - Right to prevent use or disclosure 免受挪用及披露的权利
 - importance of definability 能清楚界定资料机密与否之重要性
- Unprotectable fruits of intellectual effort 不受保障的知识产品
 - things to bear in mind when a business depends on what cannot be protected 须注意事项

C. Preventive and Protective Measures

预防侵权及保护知识产权之措施

- confidentiality 保密
- document management 文件处理
- registration 注册
- creating contractual obligations – business partners, sub-contractors and staff
合约式的束缚 - 合作伙伴、承办商及员工
- notice of registration 注册通知
- warnings 警告信函或声明
- effect of putting others notice of one's rights 权利警告的效用

D. Enforcement of legal rights

法律权利之执行

- Importance of taking action and acting promptly 迅速决策行动的重要性
- Letter before legal action 诉讼前函件
- types of civil remedies 民事补救的种类
- interlocutory remedies in infringement actions - when and how 反侵权诉讼中的临时补救 - 时间性与程序
- damages and undertaking in damages 损失之赔偿与承担