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Feature **performance**

# Brand detectives

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## Protecting intellectual property is becoming big business for domestic Chinese firms, as well as foreign investors.

**P**art of any nation's rite of passage on joining the World Trade Organization (WTO) involves getting its intellectual property (IP) protection up to scratch. As one of the WTO's younger members, China has been working on this with mixed results. On the plus side, the general consensus is that China's IP laws are in good shape and close to the standards set by the World Intellectual Property Organization (WIPO). The problem is enforcement. China's huge black market in pirated DVDs and brand name goods, and the rampant copying of everything from golf clubs to auto parts, has left many seeing red. In October 2005, against a backdrop of continuing trade disputes, the United States government turned to the WTO to help investigate China's IP practices.

"With China's accession to the WTO and with the expansion of the Chinese economy, there's an increase in all kinds of commercial disputes – and there's often more and more money at stake," says Benny Kwok, a Hong Kong forensic accountant and practising CPA. "Globalisation plays a part too, since IP rights are vital when a company's products are sold all around the world."

Multinational companies are most often claimants in IP cases, but it's also a growing problem for domestic companies. Many see it as an inevitable,

emerging trend, as the Chinese economy grows. "As Chinese companies become more sophisticated and develop more IP, they are looking at how to protect their technical or technological advantages," points out John Leary of law firm White & Case.

### Complex call

Patrick Ma, also of White & Case, points out that Chinese businesses are increasingly cognisant of trademark issues. "They realise how difficult it is to build a brand and they know how important brand names are." It's something Beijing Olympic officials are coming to terms with, as both city and national governments clamp down on products and companies using the 2008 games' Olympic symbols.

The fact that Chinese companies are starting to experience their own IP enforcement issues shows how the nation's industrial economy is maturing. "There is a clear historical trend, as the same thing happened in Japan and Korea," Leary explains. This catch-up

may, however, be coming sooner than anticipated. Research house Gartner predicts that research and development spending in Beijing and Shanghai will be around two percent of those cities' GDP this year. That's around the same level as Europe and only marginally less than the U.S.

Copyright is just a part of the IP story, which also includes trade secrets, trademarks and patents. According to Leary, patents claims can be particularly complex. "Chinese companies are learning the hard way about the complexities of patent law," he says, citing the example of a new product being introduced to the U.S. market. "There the company can find itself being sued for infringement because patents already exist for certain aspects of the product and as such it doesn't have all the right documents."

Many products are an IP minefield: A cell phone may include several thousand patents. Phone manufacturers and other tech companies will often agree to pool patents within narrow areas. But with so many to consider it's all too easy to slip

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up, as Motorola discovered in 2002. It was found to have infringed a patent on Chinese characters that had been granted to a Chinese company.

### Calling forensics

The importance of IP protection has opened new doors for forensic accountants. While many companies see IP first and foremost as a legal issue, others recognise there is a financial aspect – and call in the accountants.

Mark Bowra, a forensic accountant working for KPMG in Shanghai, says most of his IP work covers relationships between business partners. While he can’t comment on specific cases, he gives an example of the service his firm provides. “Say you have a U.S. computer manufacturer outsourcing production to a Chinese factory. The U.S. company wants to make sure that production complies with its precise specifications – for instance that there are no substitutions of poor quality parts.” If products are returned because poor-grade components have been used, the U.S. company can find itself with a serious brand issue.

These days Bowra divides assignments between problem cases and clients

wanting to take pre-emptive action by getting the accountants to check their manufacturers’ compliance with business agreements. “Forensic accountants have the investigative skills to uncover what’s going on,” he says.

Lawyers are also referring work to accountants, and using their help with enforcement. Agreements between IP owners and their outsourcing partners

### Copying down

▶ The Hong Kong government is once again reviewing the controversial Copyright Ordinance. In 2001 a series of amendments to the Ordinance created uproar – primarily because they effectively criminalised photocopying of newspaper and magazine articles, and also because they failed to address Hong Kong’s restrictive regulations on parallel imports for copyright materials such as music and video games. The government now proposes setting a threshold on the permissible level of photocopying.



