



**Your trade fair
presentation in Germany**
参加德国展会

Are you prepared for legal challenges?
法律方面您准备好了吗？

Does your company participate in a trade fair in Germany?

您的公司准备在德国的展会上参展吗？


Be prepared for possible legal challenges

请就法律上可能存在的挑战做好应对准备

A trade fair gives you the opportunity to present your own goods and services, explore the sector's new trends and establish new contacts. However, beware that exhibitors are frequently confronted with legal challenges, such as

展会不仅提供了展示产品和服务、探索行业新趋势以及建立新的商业联系的可能性。与此同时，常常也存在一下法律上的挑战，例如：

- **infringement** of patents, trademarks, copyrights, registered designs, utility models and other industrial property rights (“IP rights”);
侵犯专利、商标、著作权、外观设计、实用新型以及其他工业保护性权益（“知识产权”）；
- **misleading** advertising or false statements by competitors doing harm to your business;
有违竞争的宣传手段，例如具有误导性的广告，或同业竞争者的不实或有损商业的陈述
- **violation** of confidentiality obligations and restraints on competition;
违反保密义务和竞业禁止义务；
- **preliminary injunctions or seizure proceedings.**
临时禁令或没收程序。



Dealing with such problems will have a negative impact on your success at the trade fair.

对这些问题的处理会对您在展会的成功造成显著影响。

In such a case, it is often crucial to **react immediately** and accurately on these complex matters in order to take the **necessary legal steps** without delay.

Avoid wrong decisions and do not hesitate to contact us in order to **maximise your success** at the trade fair. A court decision to your business' advantage will be of little help as it is usually made months or even years later.

这种情况下，为了能毫无延迟地采取正确的法律行动，通常起决定性作用的是迅速并且准确地对这些复杂的事实情况作出反应。一个错误的决定或在不利的时间点上的延迟可能会对展会取得成功产生严重的影响，因为即使法院作出有利的判决其产生的效果也是有限的，如果历经数月或者数年后法院才宣判。

Additionally, foreign trade fair participants often return to their home country immediately after the fair. Therefore, subsequent court proceedings will be delayed and a later enforcement of the court decision often turns out to be difficult in practice.

此外，国外的参展商通常在展会后会直接回国，致使后续法院程序中不仅境外送达会耗费时间，而且之后的法院判决的执行通常也会面临实际的困难。

Our advice: Be prepared for possible legal disputes as thoroughly as for your trade fair presentation.

我们的建议：在参展时请您对可能产生的法律争议做好充分的准备。

Fully concentrate on your business during the trade fair
在展会上集中精力处理您的业务

Let us take care of legal matters in advance
让我们预先处理好法律事宜

Even if legal challenges cannot be fully prevented during trade fairs, a good preparation of the legal aspects will considerably reduce the time you will have to spend:

即使在展会进行过程中无法完全避免法律上的挑战，预先做好法律方面的充分准备也可以大幅减少您所须耗费的时间：

- Ensure that you have applied for all **IP rights** possible and that you are either the originator of the products, goods or services presented at the fair or that you can prove respective **licences**.
确保您已申请了所有的知识产权，并且您是展会上展出产品、货物或服务的创始人，或您已从法律所有人处取得了相应的许可。
- Provide **proof of IP rights** (e.g. copies of the registration and application for trademarks, registered designs and utility models; affidavits and documentation about the development process in case of copyrights).
提供知识产权的证明（例如商标、专利、实用新型及外观设计的注册文件和申请证明的副本；就版权事宜，提供代替宣誓的保证及记录研发过程的文件）。
- For third-party IP rights, **copies of licensing agreements** or affidavits will be useful.
针对第三方的保护性权益，许可协议的副本或代替宣誓的保证都会起到帮助作用。

- Contact us in advance to make the necessary preparations and discuss availability during the trade fair. We are **experienced in trade fair IP conflicts**, know the competent courts, authorities and trade fair managers and we can instantly react in case of a dispute during the trade fair.

事先和我们取得联系进行必要的准备及商讨展会期间的可支配性。我们在展会上处理知识产权争议拥有丰富的经验，熟悉相关法院、行政当局及展会管理方，并且我们能够在展会期间遇到争议的情况下迅速作出反应。

- Past experience has shown that in case of **product piracy** it is very important to have a law office with a branch abroad or which closely cooperates with foreign law offices so that – especially in Eastern Europe and Asia – delays and language barriers can be avoided and border seizures prepared more effectively.

就产品盗版的问题，根据以往的经验，一个在海外有分所或和国外的律所紧密合作的律师事务所可以发挥重要作用。特别是在东欧以及亚洲，可以籍此避免不必要的耽误和语言障碍，并且可以更有效地准备边境没收程序等法律措施。

- If, before the trade fair, you become aware of **intended IP infringements** to be expected during the trade fair, we can prepare the respective judicial and extra judicial measures in time.

如果您在事前已经取得展会上可能发生的具体侵权行为的信息，我们可以在展会开始之前及时准备相应的诉讼或非诉法律措施。


What to do in a potential dispute at a trade fair? 展会中如何面对潜在的纠纷？

Ensure that all necessary documents are available 确保能够获得所有必要的文件

In case of infringement of intellectual property rights during the trade fair, immediate action is essential. Therefore, prepare the required documentation in order to avoid any delays:

在展会中如果遇到侵犯知识产权的情况，立即采取行动是至关重要的。因此为了避免任何的延误，应准备好所有必须的文件：

- Take copies of any **proof of IP rights** as well as the original affidavits to the trade fair or deposit them at our office.
将知识产权的证明文件副本和代替宣誓的保证的原件带去展会，或者将这些材料寄放在我们的办公室。
- In case that **warnings, court / authority decisions or judgments** have been issued against your competitors or they have already delivered a **cease and desist declaration** with a penalty clause, make sure such documents are available at your booth at any time.
如果对您的同业竞争者已经作出了警告、法院/有关当局的决定或判决，或者同业竞争者已经提交了一份具有惩罚效力的停止申明，请您也在展位上随时准备好这些文件。
- For third-party IP rights, **copies of licensing agreements** or affidavits will be useful.
针对第三方的保护性权益，许可协议的副本或代替宣誓的保证都会起到帮助作用。



In order to document evidence during the trade fair, you should always have a fully charged and functional **camera** with you. A smartphone with camera function should be sufficient and has the advantage to attract less attention.

在展会中为了取得证明材料，您应随身携带一台充好电并可以运作的照相机。一台具有照相功能的智能手机也可以胜任，其优点是不引人注目

Make sure **our contact details** are available to your employees working at the trade fair in order to be able to contact us without delay.

将我们的联系方式提供给您在展会现场的工作人员，以便他们可以毫无延迟和我们取得联系。

IP right conflict: Infringement of your IP rights or unfair commercial practices by competitors?
知识产权争议：您的同业竞争者侵犯了您的知识产权或从事了违反商业竞争的行为？

How to stop infringement during the trade fair 如何在展会中制止这些侵权行为

If you discover that one of your competitors infringes your IP rights, we are able to obtain a preliminary injunction from the court **within a few hours** to immediately stop the infringement at the trade fair.

如果您在展会前不久或展会开始时才发现您的同业竞争者侵犯了您的知识产权，这种情况下可以对此申请禁令。法院可以根据具体情况在几小时之内作出此临时禁令，至少暂时制止这些侵权行为。

What you can do:
就此可以采取下列行为：

- Secure **proof material** of infringing acts (internet screenshots, photos, advertising material, etc.) – also **witnesses** are important.
对侵权行为的证明材料进行记录（网上截图、照片、宣传材料等），证人也是非常重要的。
- Identify the **infringing entity or person** (name / address, in most cases to be found in the trade fair catalogue)
对侵权人的名称和地址进行确认（大多都会显示在展会手册中）。
- **Notify** us and provide us with collected material.
告知我们并且提供所收集的材料。

We will review the case and then immediately discuss with you the **most effective strategy to stop infringement**. Once we have the necessary proof material at hand, we are able to submit to court a motion for a **preliminary injunction within hours**.

我们会对案件进行审核并且立即与您进行商议，采取最有效地策略停止侵害。一旦我们掌握了充分的证明材料，我们在数小时内向法院递交一份临时禁令的申请。

Enforcement:
执行：

- A **bailiff** will deliver the preliminary injunction to the infringer on our behalf, seize the infringing objects or might even close the booth.
法院执行人员将代表我们向展会侵权人送达临时禁令、没收侵权物品，甚至关闭其展台。。
- In case of continuous infringement, the court will order a **fine** of up to EUR 250,000 upon our request.
如果存在继续侵权的情形，法院可以根据我们的请求对其处以最高金额为二十五万欧元的罚金或者拘禁。
- To secure your claim for reimbursement of procedural costs, it is possible to have the bailiff collect a security amount or seize **further goods displayed** by the infringer.
为保障对法院程序费用的补偿请求权，可通过法院执行人员扣押侵权人所展示的其他货品。

Have you already been accused of an infringement before the trade fair?

在展会开始前您就已经就侵权行为受到指控？

Possible defence strategies

可行的抗辩策略

Avoid injunctions at or right before the trade fair that stop you presenting any of your products. It is possible to inform the court in advance with a **caveat** presenting your arguments why the case is unfounded. In most cases the court will consider your reasoning when deciding on the case. Moreover, upon receipt of a caveat, the court tends to hold an oral hearing before issuing an injunction which helps you a lot to delay a negative court order.

如果您已被申请临时禁令，法院可以颁布此临时禁令，而不必事先听取您对案件观点以及提供给您进行抗辩的机会。如果您担心在展会前或者展会上会被申请临时禁令，一种可能性是向法院准备好一份所谓的权利保证书权利保护书并且向其阐述不应颁布此禁令的观点。如果事实上您已经被申请了临时禁令，法院在多数情况下会参考您在此权利保护书上的观点。此外，在提供权利保护书的情况下，法院更倾向于在对申请作出决定前举行一次听审。

How to proceed:

如何操作：

- Forward us the documentation stating **your competitor's accusations.**

将您的同业竞争者对您作出指控的文件材料转交给我们。

- We give you the necessary advice and identify the information and documents required to **protect your interest**.

我们会提供必要的建议，并且为保障您的利益对需要准备的信息和文件进行确认。

- In most cases our work is to file a caveat with the court to ensure that your **trade fair activities are not affected**.

多数情况下我们会起草一份权利保证书，确保您在展会上的活动不受影响。

- From our experience, it is also possible to **settle infringement disputes on an amicable basis** during the trade fair, at least in some cases.

根据我们的经验，也会在某些案件中存在友好协商解决争议的可能性。

- If **other defence strategies** prove either to have more chances of success or to be more useful (e.g. the delivery of a cease and desist order with a penalty clause or a court settlement), we provide you with the respective advice.

如果其他的抗辩策略被证明为更有机会或更有效果（例如提交一份具有惩罚效力的停止行为申明或进行和解），我们也会向您提供相应的建议。

An injunction is delivered to you during the trade fair?

在展会上已经向您送达了临时禁令？

Then every minute counts!

则须争分夺秒！

A preliminary injunction is a court order that usually prohibits you from committing a certain – allegedly illegal – act (such as unfair advertising activities, infringement of trademark law, patents or copyrights). Irrespective of your agreement or disagreement with the court's decision, it is binding once delivered to you. Therefore, it is essential to remove the injunction as quickly as possible.

通常情况下，临时禁令是一份禁止您从事特定（被申请人主张违法的）行为（例如有违于竞争的宣传，对商标权、专利权或著作权的侵权行为）的法院决议。不论您认为法院的决定是否正确，此送达的文书当下对您是有约束力的。因此，尽快对此临时禁令进行排除具有关键意义：

- **Notify us immediately** and send us the preliminary injunction together with all further court documents. 须毫无延迟地告知我们，并且将此临时禁令连同所有其他的法院材料转交给我们。
- Forward us the documentation stating **your competitor's accusations**. 将您的同业竞争者对您作出指控的文件材料转交给我们。
- First **implement the injunction** since otherwise severe penalties (a fine or imprisonment) may be imposed. 先执行临时禁令的内容，否则将会面临其他严厉的处罚（罚金，拘禁）。

- Together with you, we will develop a legal strategy for the subsequent approach and will **represent you in the opposition proceedings** against the injunction. 我们将与您一起为后续步骤共同制定一套法律应对策略，并且代表您参与临时禁令的抗辩程序。
- Any **press releases** or other public statements related to the injunction should be discussed not only with your Public Relations Department but also with us. 就任何与临时禁令相关的新闻公报或其他公开申明，请您不仅和贵司公共关系部门协商，也请和我们一起协商。
- Keep enough cash ready at your trade fair booth to pay off the attorney and court fees, since otherwise your opponent with the help of a bailiff may **seize products** presented at your booth in order to secure his claim for reimbursement. 请您在展会上准备足够的现金应对律师和法院费用。否则申请人为保证其（法院费用等）偿还请求权可能对您的展台特别是展台上的商品进行扣押。

Our IP experts are ready to support you!
我们的知识产权专家们随时可以为您提供支持！

We will be glad to answer any of your questions in advance via e-mail or telephone and to **come to your booth** at the fair to provide you the necessary support:

您可以预先通过电子邮件或者电话的方式联系我们，我们也很愿意前往您的展位为您提供必要的支持：



Visit our website and find out more about our expertise as well as our experts.

敬请查询我们网站中更多关于百达中国业务组的专题和资讯。



Dr. Sebastian Heim 博士
Lawyer and Licensed Specialist for
Intellectual Property Law
BEITEN BURKHARDT
Rechtsanwalts-gesellschaft mbH
Munich

律师，知识产权专业律师
百达律师事务所
慕尼黑分所

Tel. 电话 +49 89 35065-1421

Fax 传真 +49 89 35065-2152

E-Mail 电子邮 Sebastian.Heim@bblaw.com



Dr. Jenna Wang-Metzner 王延风
Lawyer
BEITEN BURKHARDT Rechtsanwälte
(German Attorneys-at-Law)
Beijing

合伙人(北京)
百达律师事务所
北京

Tel. 电话 +86 10 85298110

Fax 传真 Fax: +86 10 85298123

E-Mail 电子邮 Jenna.Wang@bblaw.com



北京 · 柏林 · 布鲁塞尔 · 杜塞尔多夫 · 法兰克福(美茵河畔)
莫斯科 · 慕尼黑 · 圣彼得堡

WWW.BEITENBURKHARDT.COM