

Chinese Language Trademarks



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Chinese language trademarks

1. INTRODUCTION

For companies doing business in Asia the proper selection and use of Chinese language trademarks and trade names is becoming increasingly important, if not crucial. The development and opening of the mainland Chinese market has provided a great impetus for companies to focus on the development and use of Chinese language trademarks for their company names and products. The vast majority of mainland Chinese identify companies and their products solely by their Chinese trade names and trademarks.

Chinese language trade names and trademarks are also important in other jurisdictions where Chinese is used, such as Hong Kong, Macao, Taiwan, Singapore, Malaysia and Vietnam. This is so even where the majority of people are familiar with Roman script and can read English language trademarks. Chinese people will generally tend to use the Chinese brand name for a product rather than the English brand name.

This note provides a brief introduction to Chinese language trademarks and attempts to provide explanations of some of the main difficulties faced by businesses and individuals when dealing with Chinese trade names and trademarks.

First, the Chinese language and Chinese characters are described. Second, the differences between simplified and non-simplified characters are explained followed by a brief description of the main ways in which Chinese is Romanised. Finally, the ways in which foreign companies have developed Chinese language trade names and trademarks are considered.

2. THE CHINESE LANGUAGE

The Chinese language is one of the oldest languages spoken in the world. In addition to mainland China, Taiwan, Hong Kong and Macao, Chinese is also spoken by large communities of overseas Chinese in numerous countries including Singapore, Malaysia, Thailand, the Philippines, Indonesia and Vietnam. There are also substantial overseas Chinese communities in the USA, Canada, Australia and the United Kingdom.

The Chinese language has also had a strong influence on a number of Asian languages, in particular, Japanese, Korean and Vietnamese.

2.1 Chinese Dialects

There are numerous dialects of Chinese. The most widely spoken are Mandarin (Putonghua), Cantonese, Hokkien and Shanghainese. Cantonese, and Shanghainese are spoken in Guangdong (Canton) and the Shanghai region respectively. Hokkien is spoken in Fujian province and Taiwan. Cantonese and Hokkien are also widely spoken by overseas Chinese in South East Asia. The spoken forms of these dialects are incomprehensible to speakers of other dialects.

Mandarin (Putonghua) originates from the area around Beijing and is spoken as the principal dialect in northern China. Mandarin has been established since the early ages of the Chinese empire as the national language of China (the language of the mandarins, i.e. imperial officers and civil servants). "Putonghua" means the "common language". Where Mandarin is not the principal dialect, such as, for example, in Guangdong and Shanghai, Mandarin will be spoken as a second dialect. In most Chinese schools and universities, Mandarin is the medium of education. Mandarin is also spoken by many overseas Chinese as a first or second dialect.

Due to the influence of local dialects, the Mandarin spoken in the different regions of China varies with different words being used to describe the same object. The difference is more marked between the mainland of China and Taiwan which have been separated for over 50 years. Generally, however, these differences do not cause serious problems for communication.

Despite the differences in the spoken language, because of the way in which the Chinese language is written with characters to which different sounds can be ascribed in each dialect, each dialect can be written with the same Chinese characters.

When writing official or formal documents, Chinese will use Mandarin grammar and sentence structure. However, when writing in the vernacular, there can be substantial differences in the grammar and sentence structure used. In order to represent words not used in Mandarin, locally developed characters are also sometimes used.

2.2 Chinese characters

Chinese characters are ideograms. They originated as hieroglyphics and have over time been simplified into an easily written form. Each character represents an object or idea and is essentially a stylised drawing of that object or idea.

Chinese characters are not written phonetically. It is not possible to know how a character is pronounced merely by looking at it, although, one can often make an educated guess based on similarities to other characters. In order to learn to read and write Chinese characters it is necessary to memorise the way a character is written and its pronunciation in whichever dialect one is learning to read.

Chinese characters have developed in four main ways to describe items.

- Some characters are simple, stylised, representations of objects. These are generally common things such as parts of the body, the sun, the moon and trees.
- Some characters are more complex representations of objects or abstract ideas. These more complex characters are made up of two or more characters which give an idea of the meaning.
- One part of a character will give an indication as to a class of objects to which an object belongs (these are called "radicals") such as, plants, metals or parts of the body and another character will be used to indicate the approximate sound, based on the way in which the second character is normally pronounced.
- In some less common cases, characters are assigned to give the pronunciation of an item, to objects or ideas for which a sound exists, but for which no specific representation has been developed.

Finally, in order to deal with more complex ideas, two or more characters will be combined to make a word.

Set out below are examples of each of these types of characters:

(a) Simple Representations

The following Chinese characters represent each of the following things:

Person 人

Mouth 口

Eye 目

Hand 手

Tree: 木

Sun: 日

Moon: 月

Woman: 女

(b) Complex Representations

More complex objects or ideas may also be represented by the combining two or more characters together into one character, such as:

Forest: 森 Three trees together

Man: 男 A field being carried by strength

Good: 好 A woman and a child together

Trouble: 困 A tree stuck in a box

Safe: 安 A woman under a roof

2.3 Use of Radicals

A "radical" is often used to indicate that an object is part of a group of words, such as body parts, water and metal.

Iron: 铁 the first part of the character for iron is the *radical*, which is used to indicate some type of metal or metal related objects. Characters created with the metal radical include:

Silver 银

Copper 铜

2.4 Multi Character Words

More complex words are then created by the combination of two characters. For example:

China: 中国

Middle + Country (that is, the Middle Kingdom)

Communism: 共产主义

Common + Property+ Main + Idea
(Main + Idea = ism)

Airplane: 飞机 Fly + Machine

Car: 汽车 Gas + Vehicle

Country 國 国

Vehicle 車 车

3. SIMPLIFIED AND NON-SIMPLIFIED CHARACTERS

A further complication to understanding Chinese characters is the use of simplified characters. A number of characters have been simplified for centuries. In 1958, in an attempt to expand literacy in mainland China, the government of the People's Republic of China introduced standardised simplifications of numerous Chinese characters. These simplifications have also been adopted in Singapore. (Japan has also adopted its own form of simplifying characters). Taiwan, Hong Kong, Macao and most overseas Chinese still use traditional characters.

A simplified character has the same meaning as its non-simplified counterpart. Simplified characters are best thought of as being akin to simplifications in the spelling of English words that have been adopted in the United States of America, such as "harbor" for "harbour" and as "ize" instead of "ise".

Four basic methods have been adopted to simplify characters:

- common simplifications used in the past
- the use of only one part of a more complex character
- the simplification of radicals
- in rare instances, the adoption of a new character

Examples of simplified characters, with their non-simplified equivalent are:

Non-simplified	Simplified
Political Party 黨	党

4. ROMANIZATION OF CHINESE CHARACTERS

The Romanisation of Chinese characters causes more problems than the use of simplified characters. There are two main systems for Romanisation of Mandarin: *Pinyin* and *Wade Giles*. In addition, in Hong Kong there is a formal system adopted for the Romanisation of the Cantonese pronunciation of characters.

4.1 Pinyin

The Pinyin system of Romanisation is used in Mainland China and Singapore. This system is gaining wider acceptance worldwide. Pinyin has been developed to make use of the 26 letters of the English alphabet to pronounce Chinese. The pronunciation of most vowels follows the English pronunciation. However, a number of consonants do not match the English pronunciation.

In particular, the following consonants are pronounced differently.

Pinyin Approximate Pronunciation

C	Ts
Q	Ch
X	Hs
Zh	J

4.2 Wade Giles

The Wade Giles system of Romanisation was developed in the 19th Century. It is used principally in Taiwan in a form modified from the original. The Wade Giles system relies on the use of aspirated consonants as a guide to pronunciation. Under the Wade Giles system, the capital of China is written Peking, but is in fact pronounced Beijing because in the Wade-Giles system P is pronounced B, K is pronounced J.

When used correctly, the Wade Giles system arguably provides a closer pronunciation of Mandarin than Pinyin. However, for most foreigners

the system's complexities mean that it does not provide a good guide for the pronunciation of Chinese.

4.3 Cantonese Romanisation

As the dialect most commonly spoken in Hong Kong is Cantonese, the government of Hong Kong has adopted a form of Romanisation based on the Cantonese pronunciation of the characters. This is used in Hong Kong but not elsewhere. A slightly different version of Romanisation of Cantonese pronunciation is also used in Macao.

5. CHINESE TRADEMARKS

Since the mid 1800's when western companies first started trading with China, companies have developed Chinese language trademarks and trade names. Some companies have put much effort into developing trademarks and trade names with good connotations. Other companies have left it to their agents or distributors in Hong Kong or Taiwan to develop their trademarks and trade names. This has and can cause immense problems, particularly when a name that sounds good in Cantonese does not have the same sound or connotations in Mandarin.

There are three basic strategies that companies use to choose appropriate Chinese language trademarks and trade names. These are:

- Transliteration
- Translation
- Development of a distinctive Chinese trademark.

5.1 Transliteration

Transliteration is the most common method used by foreign companies to develop Chinese language trademarks and trade names. Transliterations approximate the name of the company or its products. Such marks add a cachet of foreignness to the Chinese trade name or trademark. Transliterations are generally used for invented words or surnames which do not have another meaning.

Transliterated names are often created by putting together characters that approximate the sound of the English name. Generally, attempts are made to select characters with good meanings to transliterate the name.

Problems can arise however, when, as is common, a name is transliterated into Cantonese due to a market presence in Hong Kong and then subsequently used in Mainland China. The pronunciation of the name in Mandarin can be substantially different.

For example, McDonald's uses a transliteration (麦当劳) which in Cantonese approximates to MakDonNo. In Mandarin this becomes Maidanglao.

In some cases companies have attempted to add a meaning to the name as well. For example, Pizza Hut uses a transliteration, (必胜客) which in Cantonese approximates the pronunciations of Pizza Hut and means "the customer must win". In Mandarin, the pronunciation does not sound like Pizza Hut, but does mean the customer must win.

5.2 Protection of Simplified and Non-Simplified Trademarks

As simplified characters are the same characters as the non-simplified version, in general, a trademark registered in simplified characters should prohibit the use of another party of the non-simplified characters and vice versa. In mainland China, this is accepted law. In Hong Kong and Taiwan there is no clear provision to this effect.

5.3 Translation

Foreign companies also attempt to translate the meaning of the company's trade name or trademark. Companies which have translated their trademarks are generally companies with generic or descriptive names.

Examples of companies which have translated their trademarks are American Express, United Airlines and American Standard.

There are a number of dangers with translating trademarks. Firstly the translation may not accurately reflect the full English meaning of the

trademark. For example, American Express uses a translation (美国运通) which means "American Transportation". This does not fully express the meaning of "Express" in American Express's name.

Conversely, for other companies, the translated trademark may all too accurately reflect the original name and not translate the years of product positioning which has given the name cachet beyond its pure meaning. For example, American Standard uses the name "Meibiao" (美标) which translates into American Standard but does not have any of the extra connotations of the trade name American Standard.

Chinese trademarks and trade names to ensure that a consistent approach is adopted and that valuable Chinese trademarks and trade names are developed from the outset.

5.4 Development of a Distinctive Chinese Trademark

Some companies have adopted completely new trademarks with no relation to their English trademarks. These are either companies which have been based in Asia a long time, such as Hong Kong companies Jardines (怡和), Swire (太古) and Hong Kong Bank (汇丰), or recent arrivals, which have made the effort to develop new trade names or trademarks.

Such trademarks are generally developed in consultation with advertising agencies after carrying out surveys in the target markets to ensure the acceptability of the name in major dialects. Coca-Cola for example uses the Chinese trademark 飞雪 (Flying Snow) for its English brand BonAqua.

6. CONCLUSION

The development and use of Chinese language trade names and trademarks by foreign companies needs much thought and consideration. With the continuing growth of the Chinese market, it is essential that companies put into place proper systems to develop Chinese trade names and trademarks that are appealing to consumers in all regions of China. Failure to do so can be fatal to a company's potential to exploit its brand, may cost it much money, and waste considerable time in developing a strong market presence.

We recommend that companies entering the Chinese market develop a formal policy for the creation of

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OUR CHINA INTELLECTUAL PROPERTY PRACTICE

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As one of the few international law firms with an IP agency licence in China, we operate a domestic IP agency in Shanghai with a branch office in Beijing. The agency enables us to handle IP prosecution and trade mark/copyright litigation directly for our clients. Additionally, most of our Greater China-based lawyers are locally qualified and bilingual with in-depth knowledge of the local legal and business environment and language(s).

We advise on all aspects of contentious and non-contentious intellectual property law. Hogan Lovells' China IP practice is consistently awarded a first tier ranking in IP matters by rating agencies such as Chambers, the Legal 500 and Managing Intellectual Property.

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