

The wheels of commerce

Intellectual property rights (IPR) infringements have been part of business relations between China and the West ever since paper, the seismograph, cast iron, porcelain, silk and gunpowder were duly copied by the West. Traditionally in China knowledge has been considered a common good and not something to protect for profit.

Taking this into account, Western lawyers have been screaming down the Great Wall to no avail, while many Chinese businessmen wonder what the fuss is all about.

Therefore, businessmen facing IPR issues might enlighten themselves with a George Bernard Shaw quote: ‘Some men see things as they are and ask “why?”; I dare to dream of things that never were and ask “why not?”’

Ahead of China’s entry into the World Trade Organisation (WTO), a farsighted Chinese businessman retained our services to prepare his business empire for the legal ambushes that might come his way.

Sometime during 1997, pre-Asian financial crisis

Just like any well-oiled relationship network, the *guanxi* system was simmering with information twenty-four hours a day. It’s probably the only type of network in China that remains hard to monitor and censor. This time, one of the Chongqing *guanxi* networks I directly or indirectly belonged to had picked up that Jackson Long’s barbarian business partner had moved to Beijing. Apparently the Westerner had set up a company some time ago together with a group of friends, and

was looking to assist Chinese companies with their great leap forward into the international arena.

More *guanxi* antenna picked up the signal, and the information stream ended up reaching Mr Li, a motorbike tycoon who ran his manufacturing operation from beautiful Chongqing. From there, Mr Li's scouts in Beijing were asked to sniff out a few more facts and check if we were bona fide enough to deal with his company.

When the signal came back indicating our trustworthiness, my lawyer friend Adam's *guanxi* network was informally plugged into the loop, to see if we'd be interested to assist Mr Li.

Even from behind the cloud-shrouded mountains of Sichuan, Mr Li's name was already reverberating in Beijing's imperial corridors and business circles. His company manufactured over one million motorbikes a year, with roughly fifty production sites scattered over the country. With a couple of headlines on his hands about copyright infringement lawsuits involving Japanese manufacturers, he was considered *big* business. So when we heard of Mr Li's intent to ask for a business 'favour', it wasn't long before I was flying back into the eternal Chongqing fog.

Picked up at the airport, I was driven in a limo to visit our prospective customer. No more muddy-puddle roads, but a pristine three-lane highway that rolled out in front of us like a dragon twisting its way through the mountains. From behind the darkened glass I caught a glimpse of the economic miracle unfolding here. One more city trying hard to become the next Hong Kong.

Where once farmers worked the dark red earth, now apartment blocks towered, and majestic five-star hotels, private universities, office towers and cranes were filling up the skyline. Large brand-new factories scattered the landscape, all dressed out in blue or red rooftops under which workers and machines were toiling away to produce goods destined for the rest of the world. The highway roadside was still filled with the familiar tack-tack sound of small farm vehicles, but now they numbered in the hundreds, hauling vegetables in a swarm to the many marketplaces in the city. For the less fortunate the bamboo pole was still, as it had been for many generations before them, the only method to move vegetables and meat to their destination. Among all those new and familiar sights and sounds, the clutter of slogans

welcoming the return of Hong Kong to the motherland couldn't be missed. A sign that the auspicious date was coming close for the long-lost son, who would finally return under the reassuring wing of a confident and rising China.

Mr Li's headquarters were no different from the many other factories in the neighbourhood. Huge front gates guarded an immense concrete courtyard with some badly-maintained hedge plants; in the back several blue-roofed factory buildings provided jobs for thousands of people.

Standing only 1.6 metres tall, Mr Li received us in his twenty-square-metre office. Of average build and casually dressed, he would never have been perceived in the West as head of such a large enterprise. This unpretentious, smart, down-to-earth guy had started his company less than a decade earlier with the equivalent of two thousand dollars. Then he'd built it out into an immense network of factories dispersed all over the Chinese continent, with over ten thousand employees.

He certainly wasn't a man who wasted too much time on niceties, and after tea was served he brought the discussion straight to the subject at hand.

'The WTO discussions will conclude soon, and China will become a member. We therefore may have some problems with some of our production sites. According to certain overseas manufacturers, we are infringing on their patents and production know-how. Pure rubbish! But with the WTO around the corner we need to understand what we may face in the short term, and how to make sure we can overcome legal disputes and at the same time start promoting our products overseas.'

His openness in talking about the key issues that were on his mind was a refreshing experience. Where reading tea leaves was normally part of the game of understanding what was really on the mind of a Chinese entrepreneur, for the visionary Mr Li time was money, and both needed to be spent with the utmost efficiency. Conquering the world from his Chongqing headquarters was a project that brooked no delay; every tick of the clock had to further his progress towards that goal.

Taking a sip of my tea, I responded to Mr Li's gut feelings. 'It's true that the WTO issue will give foreign manufacturers more leverage through their respective governments to push the Chinese government to make sure companies operating here clean up their acts. There's a real risk that the WTO will offer overseas corporations more leeway to pursue patent infringements, production methods and trademark violations.' After a pause I went on. 'We've all read in the newspapers that several Japanese corporations have been claiming that your company has used some of their engine designs, logos and brand names. A number of them even sound and look similar to existing brands. There's a good possibility that the only way to avoid further lawsuits is to regularise your products with Japanese companies either by creating a joint venture or paying royalties on a licensing agreement. Or developing your own designs and technology.'

Mr Li grinned, a bit surprised by my silly suggestion: 'But for me to be able to sell our product, initially we had to copy what the best in the business were manufacturing. How else do you expect to compete with them? Those companies have enough money to spend on research and development. But we had neither the resources nor the time to waste on such niceties. To survive we had to get our products onto the market fast and cheap. Now that our company has become respectable and is able to compete on quality, we can think about developing our own product range. Those lawsuits have been a bit of an annoyance but most in the meantime have been settled. What I'm looking into is moving my company into the next stage. At the moment there are over one hundred and twenty local competitors breathing down my neck trying to become as good as me. They've even started copying *my* business model. So I must be doing something right.'

Pausing to flash a million-dollar smile, he continued with a stern look borrowed from government officials breaking bad news to the people: 'Competition is too fierce on the Mainland. Everyone is vying for the same customers, and cutting prices, and I see my margins getting smaller by the month.' As he spoke he punched holes in the air with his finger.

Then his expression turned indignant while his voice went into a higher pitch: 'On top of that the government limits motorbike

licences to avoid pollution in the cities, which in turn leads to oversupply and, as you can guess, even lower margins for me.'

Then, his theatrical act over, the CEO was back at the helm. 'With the enterprise we've developed I need to make sure I can continue to grow. I believe the only way out is to sell abroad. Over there I'll be facing the same international competitors but I certainly know how to tackle those guys. It's the Chinese competitors that worry me most. If I don't make a move, they certainly will.'

Having provided similar services for a Chinese pump manufacturer, I thought it wouldn't be too difficult to develop an initial strategy to enter into overseas markets where their motorbikes could sell well, and I told him 'I'm thinking Vietnam, Indonesia, Philippines, the African continent. . . . Those markets could be used as a jumping board to enter Europe and the States.'

Apparently Mr Li was expecting something more brazen that would mark his company as different. 'I already sell roughly 15,000 motorbikes a year in Vietnam and Cambodia. What do you think if I set up a factory in Germany and use German engineers to develop my products? Wouldn't it make things easier to enter the European Union? What about hiring a design company in France or Italy that will make my motorbikes look modern and trendy? That way I could make my name known to the rest of the world!'

My eyes almost popped out when I heard his high aspirations. It took some time to take stock of the situation before I was able to make a sensible comment.

I realised that if we wanted to get this contract we'd better adjust our thinking to the same *big* level as Mr Li. Apparently the time for Chinese companies to become an international concern had arrived. In the end, I only muttered that it would all be possible, so long as we had time to work on the legal and commercial framework.

At this Mr Li stood up excitedly and showed me around his factory. The gigantic plant was buzzing with activity, crisp and clean, well-lit and running like clockwork. The plant was split into different areas of functionality, and everyone in the various work areas was dressed in a specific coloured uniform. In one area, one could see workers dressed in blue operating a battery of Korean CNC (Computer Numerical

Control) machines, chipping away at blocks of steel, making cylinders, crankshafts and other motor parts.

A bit further, workers in red were handling the quality control of parts and making statistical measurements to ferret out production discrepancies. Those parts ended up on long rows of tables where hundreds of ladies dressed in yellow were assembling the engine parts into complete motor blocks. In another area of the factory floor workers dressed in green did quality control tests on engine air tightness before adding a lick of lubrication oil.

In yet another area workers in grey were operating row after row of injection-moulding machines that pumped out colourful plastic parts used for bike lights and other trimmings.

Finally we entered the main assembly area where a conveyor belt was moving motorbike frames around at a constant speed, while workers in orange manually assembled the different parts into fully-fledged motorbikes. The whole place looked like a sleek Japanese factory I had once seen in Osaka, minus the battery of robots. Slogans placed in strategic locations reminded workers that production quality and employee safety were as important as keeping the customers smiling on their motorbikes.

At the end of the chain the motorbike got a bit of petrol and a worker in white revved the engine, testing the acceleration and speed before whisking it off to the storage area.

I was curious about the different-coloured overalls, and Mr Li's explanation was simple: 'Workers are not allowed to go into other sections of the factory without authorisation. If a blue worker is walking around in the red section he'll be picked out immediately! It makes it more difficult for employees in the factory to gain all the knowledge necessary to start up their own factory. In the past I've had at least five employees who set up their own company. Now they've all become my competitors because they were able to grab complete production information. I don't want this to happen again. There are now very clear and simple guidelines in the factory to avoid home-grown competitors. There are of course always ways to get the knowledge, but at least I've made it more difficult than in the past.'

While we walked back to the office he revealed the secret to his success: 'In all the key company positions I have close family members