

Navigating China's social media landscape: issues and best practices for brand protection (2024)

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China's booming social media landscape presents vast opportunities for brand owners to connect with a massive consumer base. Social media platforms have become a major channel for advertisement and direct communication. However, there are also challenges such as trademark infringement, counterfeit goods, copyright violations, false advertising and unfair competition. To protect their IP rights and business interests and ensure compliance with Chinese laws, brand owners must be well versed in the legislation that governs social media platforms and be familiar with different enforcement strategies for different platforms. In this article, we will explore popular social media platforms in China, the laws that regulate e-commerce, advertising, and intellectual property protection, and offer advice for brand owners to better protect their interests on social media platforms.

Popular social media platforms in China

WeChat

WeChat is an all-in-one platform that combines features such as messaging, voice and video calls, Moments (a timeline for sharing updates), social networking, e-commerce, e-payment and mini-programs. With over 1 billion monthly active users, it offers a wide range of marketing opportunities and has become an essential platform for communication, social networking, content sharing, and business transaction in China. Almost all brand owners doing business in China, big or small, have opened an official account as a channel to make public announcements, launch new products, advertise and carry out promotional activities. However, due to its open platform nature, the unauthorised use of brand logos, trademarks and copyrighted content is a common issue. Many sellers use the platform to market and sell infringing products.

Douyin

Douyin, known as TikTok outside of China, is a short-video platform with millions of users. It has become a powerful marketing tool that allows brands to reach consumers through creative and engaging content. However, brand infringement issues can arise (eg, unauthorised use of brand names or logos in videos). The sale of infringing and unauthorised products on Douyin

livestreams is a growing problem.

Kuaishou

Kuaishou is another popular short-video platform, known for its focus on live streaming and user-generated content. Like Douyin, Kuaishou poses risks of trademark and copyright infringement when users misuse brand assets.

Xiaohongshu (Little Red Book)

Xiaohongshu is popular among young consumers. It combines social media features with product reviews, shopping experiences and recommendations, enabling users to discover and share experiences, tips and product recommendations across various categories (eg, beauty, fashion, lifestyle, sports and travel). Unavoidably, a lot of content may be misleading, falsified or IP infringing.

Sina Weibo

Sino Weibo, often called the “Chinese Twitter”, is a microblogging platform for real-time news updates, discussions, celebrity interactions and user-generated content. The platform has over 500 million registered users. Users can post short messages, share photos and videos, follow other users and interact through comments and likes. Many brand owners have an official account for public announcements, new product launches, advertising and customer interactions. It is not uncommon to find infringing content and counterfeit products being offered on the platform.

Bilibili

Bilibili is a video-sharing platform popular among China's younger generation. It focuses on user-generated content, including animation, gaming and entertainment. Although the platform has implemented strict copyright policies, infringement can still occur, primarily related to unauthorised use of copyrighted material.

These are only a few examples of popular social media platforms in China. It is worth noting that the Chinese social media landscape is vast and constantly evolving, with new platforms emerging and existing ones adapting to changing trends. There are many other social media platforms that are very popular among certain groups of people.

Common IP infringement issues

Due to the ease of sharing and distributing content and its instant reach to a vast public, IP infringement on social media platforms is a significant concern.

Copyright infringement

- **Unauthorised sharing of protected content:** users often share copyrighted material (eg, music, videos and images) without permission from the copyright holder. Memes, GIFs and remixes can contain copyrighted material that is shared without proper licensing.
- **Reposting and forwarding:** reposting and forwarding content created by others may infringe copyright if there is no consent or proper attribution.
- **User-generated content:** users creating content that incorporates copyrighted material (eg, background music in videos) may inadvertently infringe copyright.

Trademark infringement

- **Promoting and selling trademark-infringing products:** users may offer counterfeit products or trademark-infringing products from the grey market.
- **Fake profiles and impersonation:** accounts that impersonate brands or individuals can infringe on trademark rights and mislead users.
- **Unauthorised use of logos and brand names:** using trademarks in posts, or profile pictures, or to sell counterfeit goods can infringe on trademark rights.
- **Hashtag infringement:** using brand names or trademarks in hashtags to promote unrelated content can cause confusion or dilute the brand.

Patent infringement

While less common on social media, showcasing or selling products that infringe on patented inventions or designs are often seen on social media accounts, especially those involving certain interest groups.

Trade secret misappropriation

- **Disclosure of confidential information:** employees or insiders may inadvertently or purposely share trade secrets on social media.
- **Industrial espionage:** competitors may use social media to gather trade secrets or confidential information.

Laws governing advertising and e-commerce on social media platforms

While the relevant general laws (including the Trademark Law, Copyright Law, Patent Law, Anti-unfair Competition Law, Advertising Law and Consumer Rights Protection Law) are applicable to social media platforms, several special laws specifically govern activities on these platforms:

- E-commerce Law: the E-commerce Law regulates online transactions, including those conducted through social media platforms. It imposes obligations on e-commerce operators to protect consumer rights, ensure product quality and safety and prevent deceptive practices. Brand owners engaging in e-commerce activities on social media platforms must comply with these provisions, ensuring transparency and consumer protection.
- Provisions on the governance of the online information content ecosystem: these provisions categorise online content into “encouraged”, “negative”, and “illegal” content. Social media platforms are responsible for content management and implementing measures to prevent the creation, reproduction or distribution of negative or illegal content.
- Administrative measures for internet post comment services: these measures stipulate that service providers for internet forums, blogs and comment sections must monitor and manage user-posted content, require real-name registration and report illegal information to the authorities.
- Administrative provisions on internet group information services: this specifies regulations for social media platforms that offer group information services (eg, chat groups and forums). It includes requirements for real-name registration, content monitoring and reporting mechanisms.
- Several provisions on regulating the market order of internet advertising: these provisions regulate online advertising activities, requiring clear labelling of advertisements and prohibiting false or misleading online ads.

Social media platforms operating in China must comply with these laws and regulations, which typically involve significant self-censorship and cooperation with government surveillance and control measures. They also provide leverage and tools for brand owners to file complaints with social media platforms and remove infringing contents. Being familiar with these laws and regulations is not only important for brand owners to use social media platforms proactively, but also beneficial for protecting their rights and interests effectively.

Strategic advice for brand owners

It is crucial to aggressively enforce IP rights and commercial interests on social media platforms in China. Given the challenges of the complex online ecosystem and law enforcement mechanism in China, developing a comprehensive strategy is critical.

Proactive monitoring

Brand owners should implement robust monitoring programmes to detect potential instances that are detrimental to the brands on social media platforms. Regularly searching for unauthorised use of brand assets and actively engaging with the platform's reporting mechanisms can help identify and address infringing activities quickly and effectively.

Collaboration with platforms

Establishing cooperative relationships with social media platforms can enhance brand owners' ability to protect their IP rights and interests. Platforms are obligated to take down infringing content and implement preventive measures according to the relevant laws and regulations. Most platforms, if not all, have implemented programmes and mechanisms to receive complaints from rights holders and take down infringing content when legitimate complaints are filed. Some platforms have also been proactively going after repeated and serious offenders.

Legal action

Aggressive legal actions should be pursued in cases of severe infringement. It may start with a cease-and-desist letter, and follow with a complaint to an administrative enforcement agency, a civil lawsuit before a competent court, or a criminal complaint with the police, depending on the severity. Working with experienced local attorneys specialising in the relevant areas is crucial to navigate the legal system effectively.

Proactive approach

Brand owners can take a proactive approach to leverage the influence of social media by using social media platforms actively. Many brand owners have created their official accounts on popular platforms to promote brand awareness and engage with consumers and the public. It has become an increasingly important way to interact with consumers, provide customer service, educate consumers on authenticity and build trust and brand loyalty. It is also becoming a crucial channel to sell products directly to consumers through live streaming on social media platforms.

As brand owners explore the vast opportunities presented by China's social media landscape, it is important to understand the legislation that govern activities on these platforms. By familiarising themselves with the laws, actively monitoring for infringements and taking proactive measures to protect their IP rights and commercial interests, brand owners can mitigate the risks associated with brand infringement and counterfeit goods. Collaboration with social media platforms, aggressive legal action when necessary and proactive use of social media can further strengthen brand protection and build more powerful brand influence in China's dynamic digital environment.