

Pirate products at German trade fairs

An information sheet for exhibitors

Trade fairs reflect the market representing the complete range of products offered in a sector in concentrated form. Thus, trade fairs provide a comprehensive overview for visitors and exhibitors. Nowhere else is it easier to compare your own products with those of the competitors than at trade fairs. It comes as no surprise that exhibitors often notice their products have been faked for the first time on trade fairs.

When are copies illegal?

In Germany the basic principle of freedom to copy applies. That means that, in principle, everyone may copy other products, processes and brands.

Only the holders of special protection rights can forbid third parties the reproduction and the commercial use of his protected product or his protected brand. In addition to the production, the holder of protection rights can also prohibit the marketing by third parties or simple offering for sale or advertising of the pirated products. Furthermore, he can demand from the copying party that he desist from infringing the protection rights and demand from the compensation for goods already sold. He has a claim to information about the origin of the products and can even call for the destruction of products which still exist.

What are protection rights?

Protection rights include, among others

- ▶ Patents

Patents are granted for inventions which are: new, based on an inventive activity and commercially applicable. A patent grants the inventor the right, for a specified period of time, to prevent others from using, producing, selling or importing his invention. In return, the inventor must disclose the details of his invention in a patent specification which is accessible to everyone.

- ▶ Utility model

As in a patent, the object registered as a utility model must be new, based on an inventive activity and commercially applicable. Utility models can be registered faster and more cost-effectively than patents. The registration, however, is carried out without a corresponding check on novelty and the existence of an inventive step. Therefore chances are, that the registered utility model cannot be successfully asserted in the event of a dispute.

- ▶ Brands

All symbols, particularly words, illustrations or presentations, can be protected as a brand which lend themselves to distinguishing the goods or services of a company from those of other companies.

- ▶ Registered design

By means of a registered design a new design of products can be protected. As is also the case with the utility model, the German Patent and Trademark Office does not check whether the registered design actually satisfies the material protection prerequisites (in particular, novelty and uniqueness).

What can I do before the trade fair starts?

While making preparations for a trade fair you can already initiate measures to avoid unpleasant surprises later. To this end, you should first of all contact a lawyer. In order to effectively protect a product or a brand from imitators, you must be in possession of a protection right for it. You should bring all documents which prove that you are the holder of the protection right with you to the trade fair (originals or authenticated copies of the protection rights certificate as well as, if necessary, already obtained declarations to cease and desist or judgements against the plagiarist). Furthermore, you should make sure that, if necessary, you can contact a lawyer at the venue of the event, even at the weekend.

If you are in possession of actual information that a competitor intends to exhibit pirated versions of your protected products, you can already submit an application for the opening of border seizure proceedings prior to the trade fair. In the process of border seizure, the customs authorities may remove the goods which infringe protection rights from circulation – even after they have crossed the border.

What can I do during the trade fair?

If you notice at a fair that pirate copies of your protected products are being exhibited, with the support of a lawyer, you can issue the copying party with a warning and offer the opportunity to make a declaration of discontinuance subject to penalty. Should the copying party not be prepared to sign such a declaration, with the help of a court's interim injunction, you can forbid the copying party exhibiting the products which infringe your protection rights.

What can I do if I have no protection right?

In exceptional cases, the imitation of goods can also be illegal even without the existence of protection rights under the terms of law against unfair competition. This presupposes that a businessman imitates a product of a competitor with a competitively unique feature and offers it for sale on the market. Furthermore, there must be special circumstances which make the behaviour of the businessman appear unfair. Only if these strict prerequisites exist, the principle of the freedom to copy is broken by this protection provided by competition law.

What can the trade fair organizer do?

The trade fair organizers in Germany are happy to be able to support you to ensure that your trade fair participation will be successful. Before legal disputes arise at the exhibition centre, you should therefore inform the organizer. Only then is it possible for him to help to settle a dispute as a mediator. However, the organizer cannot assert your rights against third parties, since he is not himself the holder of the protection rights, basically that means, he cannot close any booth of exhibitors as long as no enforceable title is submitted to him.

Further information at:

- ▶ Deutsches Patent- und Markenamt: www.dpma.de
- ▶ Zentralstelle Gewerblicher Rechtsschutz: www.ipr.zoll.de
- ▶ Patentanwaltskammer: www.patentanwalt.de
- ▶ Aktionskreis Produkt- und Markenpiraterie: www.markenpiraterie-apm.de