

# SOUTH-EAST ASIA IPR SME HELPDESK

## Protecting your IP at Trade Fairs in South-East Asia



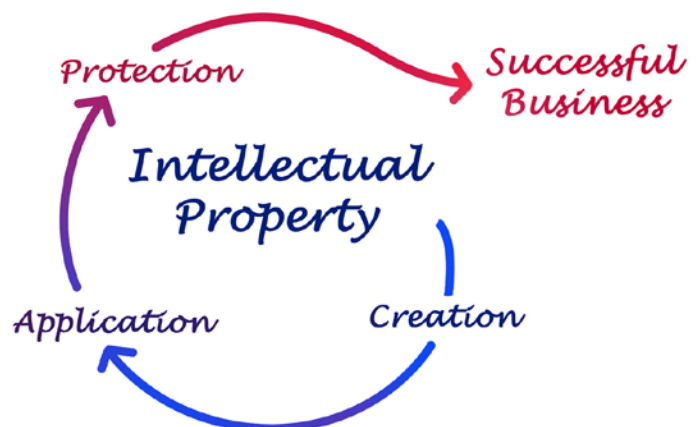
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### 1. Protecting your IP at trade fairs

Trade fairs provide intellectual property (IP) owners with the opportunity to present their innovations and ideas to potential business partners and customers and allow them to learn from and collaborate with other innovators. Sector-specific Trade Fairs in South-East Asia are becoming increasingly important among local and foreign companies, meeting the international standards of the main fairs taking place in Europe.

Singapore, especially, is positioning itself as a hub for trade fairs in South-East Asia, gathering exhibitors and visitors from all over the South-East Asian region. This has led many foreign companies to target trade fairs in Singapore with the overall aim to expand their businesses in the whole region and making contacts also in relation to neighbouring countries. Sector-specific trade fairs with considerable foreign presence also take place regularly in Indonesia, Malaysia, Thailand, and Vietnam.

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There is, however, a risk, in that disclosing your innovations to the public leaves you exposed to third parties copying and infringing on your IP. When ‘infringement’ is discussed in this guide, it is important to bear in mind that we are not always talking about traditional counterfeiting, such as your entire product and brand being reproduced without authorisation. It is more likely that competitors could be using, intentionally or otherwise, a certain part of your product or innovation. It is therefore important to be as diligent as possible and to know your competitor’s products almost as well as your own. Trade fairs are also good opportunities to get more information on your competitors.

A practical and realistic approach must be taken when preparing for and attending trade fairs. IP owners must also be patient and pragmatic, as it is unlikely that immediate action can be taken against an infringer during the time the trade fairs are in progress. There are, however, steps that IP owners can take before, during and after the event to best protect their IP. You should consider the benefits and risks to your business when deciding to exhibit your product or service.

## 2. Advance planning

When exhibiting at trade fairs, there are two very important factors to consider in relation to your IP: geography and timing. With a basic understanding of the types of IP that can be applied – and most importantly, where to protect it and how long it takes to acquire protection for your IP in these countries of interest – SMEs can put themselves in a strong position to protect their valuable intangible assets.

### The Geographical Issue

Standard advice from a specialised IP lawyer to an SME would be to protect your IP in your own local jurisdiction and also in foreign markets you are trading or manufacturing in. In relation to patents, designs and trade marks, this means filing for registration. For copyright and trade secrets, this usually means ensuring you can prove ownership (in some countries it is possible to record these to obtain proof).

Trade fairs are made up of local and foreign exhibitors and visitors. Therefore, when it comes to trade fairs, owners of IP, being the exhibitors, are disclosing their IP to a much wider audience. For example, if the trade fair is in Singapore but you know that the majority of the visitors are from China, then it will be important to explore protecting your IP in China, as well as in Singapore. Knowing where your competitors are exhibiting can give you a better understanding of the extended scope of countries within which you should consider registering your IP. Budget will, of course, be a consideration when SMEs decide where to file for IP protection, but it is strongly advised that if you are unsure, then spending a few hundred euros to file a trade mark or a design application (a little more for a patent) is certainly worthwhile.

### The timing issue

It is crucial to know that patents can take over five (5) years to obtain a grant, or in some cases longer. Trade marks and designs can take nine (9) to twelve (12) months and sometimes

up to two (2) years to obtain. These timelines, though seemingly lengthy, should not deter an SME from applying for IP protection. Regardless of when you are visiting a Trade Fair, registering your IP at the earliest, is highly recommended.

Having a registered promptly, always puts the IP owner in the best position. Therefore, it is essential that if you are an innovative SME, you incorporate an IP protocol into your normal business operations. Such a protocol should regularly check for new IP and then consider whether and where to file for protection of such new IP. This will help avoid situations, such as whilst exhibiting at a trade fair, you may realise that you lack sufficient IP protection. However, even if you do not have the time to obtain a registration, it is still important to file an application in the country of interest. Once the IP has been registered, it is then possible to take action against the infringer (for example, to obtain an injunction to immediately cease the production or distribution of an infringing product, or to recover damages). It may also be possible to notify an infringer by referring to a pending application.

It is recommended to prepare a brief file with copies of all IP registration certificates that you own in relation to the country where the trade fair will take place. You should also liaise in advance with the staff of your company in charge of monitoring the IP portfolio, to acquire knowledge and awareness of your IP in relation to the countries of exhibition (and ascertain a clear picture of your IP portfolio worldwide) so that you will be more prompt to take action should you incur any risk at the trade fair.

### Preparing for the Trade Fair

When preparing your materials for the exhibition, it is wise to notify the public, where appropriate, of your IP ownership. This can be done by using the following symbols and phrases:

©	This can be combined with the year of creation or publication to assert copyright ownership in works such as brochures, websites, software, pictures, music, etc.
TM	If you have applied for a trade mark but it is not yet registered, or even if you have not applied but are using the trade mark, the TM abbreviation can be used to assert your rights over the trade mark.
®	This symbol can only be used for registered trade marks. It can be a criminal offence to use this symbol if the trade mark is not registered (prosecutions are, however, very rare).
Patent Pending	If the patent application has been made but has not yet been granted, this phrase can be used.
Patent	Once the patent is granted, usually the patent number and jurisdiction are used to show where the patent has been issued.

It is a good idea to research the trade fair organiser's material thoroughly. For example, it is worth taking the below steps in advance:

- i) Checking for an IP or business centre that may be able to provide assistance or advice during the trade fair and reviewing carefully the terms and conditions of the trade fair.
- ii) Liaising with a local lawyer and providing that lawyer with a Power of Attorney (for example, three to four months in advance) and other proof of IP ownership so that legal action could be taken swiftly, if necessary.
- iii) Checking the list of exhibitors and making a note to check their stands.

### 3. Attending the trade fair

Trade fairs can provide a genuine opportunity to learn about new innovations and to partner with potential businesses. Whether you are investigating such potential collaboration or gathering evidence of a possible infringement, it is vital to collect as much evidence and materials as possible, for example, business cards, photos, catalogues and brochures etc.

#### Disclosure of my IP – How much is too much?

An innovation, no matter how impressive, needs to be coupled with an effective business model in order to enable its production and sale. Trade fairs present the IP owner with the opportunity to show their innovation to potential business partners. This can occur at various stages in the business's innovation process. Throughout the course of a year, you may attend three trade fairs, and at each one, your innovation could be at a different 'stage' of development. SMEs must therefore consider very carefully whether their innovation is ready to be disclosed to the public. Much of this will depend on the commercial considerations such as whether you have a genuinely marketable product. A disclosure that is made too early may result in others seeing the nascent innovation and improving on it, before claiming that innovation as their own. This is a common practice and it is usually also legal.



Hopefully, the SME wishing to exhibit would have already applied for a patent or design covering their innovation. Once this has been applied for, the IP owner can exhibit without having overlooked one of the patentability requirements of 'novelty' (one requirement of filing for a patent is that the product has not yet been disclosed to the public). You can disclose certain elements of your inventions, but it is advisable to check with a patent lawyer or patent agent when you are uncertain if your exhibition may prevent you from obtaining a patent in the future. Some countries allow for a grace period for inventions that are disclosed at trade fairs, but not all do. For designs, it is very important to apply for their registration prior to displaying them to the public in South-East Asian countries.

#### Visiting Trade Fairs – Best Practices Summary

- a) Save or collect all trade fair material and exhibitor information.
- b) Take as many photos as you can.
- c) Gather as much technical data as possible about your competitors and their products.
- d) Do not threaten legal proceedings without the advice of a lawyer. Groundless threats could result in you being counter-sued.
- e) If you suspect an infringement, immediately seek competent advice.
- f) Involve the organisers of the trade fair, if you believe it would support your case.

#### PRACTICAL TIPS

- At present, there is no mandatory requirement for trade fair organisers to set up an IP Claim Centre at the exhibition location in any of the ten ASEAN countries.
- Ideally, the main exhibition organisers should be available to provide any support that you need to make your participation at the trade fair pleasant and successful, including helping if IP risks should arise. Thus, organisers may serve as mediators at the location if needed. It is however worth noting, that exhibition organisers are most likely to remain neutral as they cannot assert IP rights over those of others.
- It is important to have the contact number of your trusted local lawyer ready, whom you could call if you need to collect evidence at the trade fairs. Especially, alert your lawyer in advance, if you know that 'the usual suspects' of infringing on your products in other markets would be present at the same trade fair.
- If you learn that imitations of your protected products are on exhibit at the fair, you can, with the help of your attorney, send the counterfeiter a warning letter, or in serious cases, ask for a court-ordered temporary injunction.



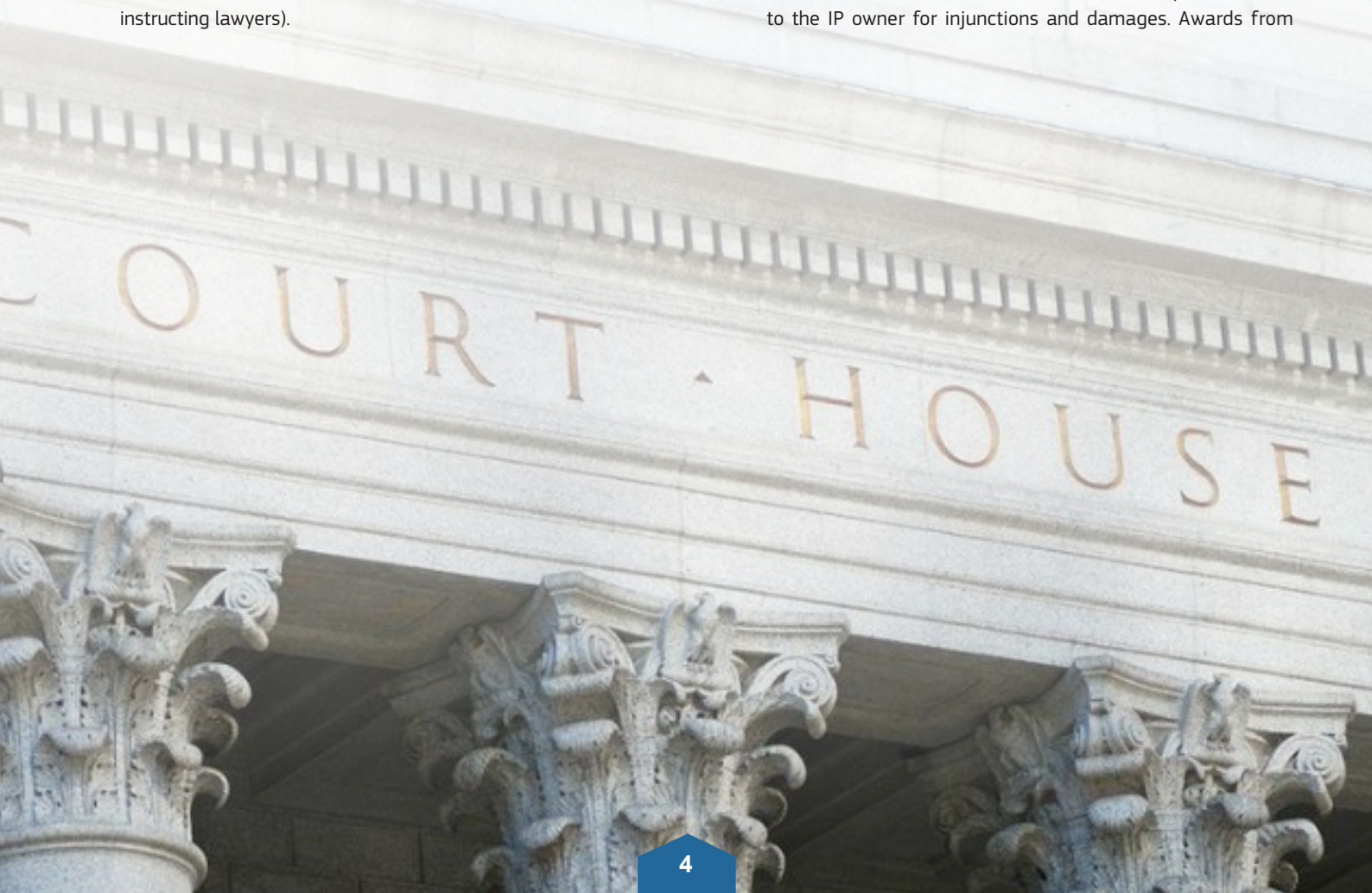
### 4. Taking action against an infringer

As advised above, at present, it is unlikely that immediate action can be taken at a trade fair, but in some emergency cases, it can be possible to bring administrative or criminal proceedings at short notice. Within South-East Asia, each country will have its own legal remedies, and most countries will have a system to search and seize infringing goods provided that there is very strong evidence of infringement. In many countries, such as Thailand, Indonesia or Vietnam, in the case of patent infringement, the court, authorities or police may refuse to seize the goods, since there may be complex factual and legal issues involved. Products infringing trade marks or copyright are more likely to be suitable for such an action.

However, trade fairs usually provide the opportunity for the IP owner to collect evidence of infringement. Such evidence may need to be notarised in order to be admissible in court (e.g. Vietnam). IP lawyers would verify the evidence and suggest a suitable course of legal action. The IP owner can then decide whether to proceed with an enforcement action or not.

There are several enforcement options that are usually recommended:

- A notification letter. This letter simply provides the infringer with a notice of your IP rights. You may wish to also include a statement that you would be willing to discuss the issue or offer to license the IP to them. This is considered to be a softer approach and is often used when there is no strong evidence of infringement. It may be possible to send such a letter on the letterhead of the IP owner (i.e., without instructing lawyers).
- A 'cease and desist' letter. This letter will usually threaten legal proceedings and demand that the infringer ceases and desists from infringing the IP in question. It is possible to ask for damages and legal costs in such letters. The letter may be accompanied by a form of settlement agreement known as 'undertakings' to contractually bind the infringer by the settlement terms. Usually lawyers are instructed to send these letters.
- Raid or 'search and seize' actions. These are usually done ex parte i.e., without informing the infringer, so as to take them by surprise. The procedure and relevant authority will be different in each Southeast Asian nation, but these raids can usually be organised with two to three days' notice. If successful, the infringer will most often be charged with a criminal offence, so there must be evidence of criminal intention (such as counterfeit goods). More common, however, would be a civil case, where the infringer is copying without criminal intention. Search and seize orders from courts in such cases across Southeast Asia are rare, but not unheard of. Local legal advice for this type of case is essential\*\*.
- Investigate the infringer. It may be that the infringer is sourcing infringing materials from a larger supplier that may reside in another country. It may be that an investigation would help to provide you with information about their customers and network. Your local lawyer or business partner may be able to assist with an investigation. There are quite many investigation companies specialising in IP across Southeast Asia.
- Issue legal proceedings. This is often a last resort. Legal actions are not as costly in Southeast Asia as in Europe, but they are still a significant drain on resources, particularly for an SME. Both criminal and civil actions may be available to the IP owner for injunctions and damages. Awards from



the court to recover legal costs are generally very rare in Southeast Asia. Local legal advice is essential.

- Alternative dispute resolution. Some countries in Southeast Asia will offer mediation or arbitration services, which can be an efficient way of resolving certain IP disputes\*\*. The arbitration services offered by the Singapore International Arbitration Centre (SIAC) are considered to be the most viable and most used option by the lawyers based in the South-East Asia region.

\*\* For more information on enforcement processes for all types of IP in South-East Asia such as about enforcement authorities or mediation/arbitration services in specific ASEAN countries, contact our confidential enquiry helpline at [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu), or visit the South-East Asia IPR SME Helpdesk website [www.southeastasia-iprhelpdesk.eu](http://www.southeastasia-iprhelpdesk.eu).

## 5. Identifying a Business Partner at Trade Fairs

The main reason why people attend trade fairs is to learn more about the industry and to find business partners with whom they can trade.

From the perspective of protecting your IP, you would have already decided how much of your 'innovation' to disclose at the trade fair. Before conducting further business and disclosing more information – some of which may be confidential – you may want to consider requesting the other party to sign a Non-Disclosure Agreement (NDA). These are very simple and short legal contracts that help to protect you from trade secret theft and they can help you demonstrate that you have not disclosed your full invention (for example, for the purposes of maintaining novelty for a patent

application). Such agreements can be obtained relatively cheaply from a local lawyer and, can generally be re-used.

It will not be possible to conduct substantive due diligence at a trade fair and so it would be unwise to enter into large scale agreements without first conducting a background check on your potential partner. If the parties insist on having some form of written record on which to base a future agreement, then a Memorandum of Understanding (MOU) could be entered into. Again, it would be advisable for all parties to sign a Non-Disclosure Agreement.

For further information, visit our website and download the South-East Asia IPR SME Helpdesk Guide to Using Contracts to Protect your Intellectual Property in South-East Asia, available on our website.

## 6. Take-away message

Trade fairs present splendid opportunities for collaboration and furthering business potential, but at the same time, they present a degree of risk in relation to theft of IP or copying and consequent incremental innovation. With a robust and well-prepared approach to trade fairs, IP value can be maximised to the benefit of the IP owner.

More information on developing an IPR strategy in South-East Asia and on how to secure your IP at trade fairs can be found on the South-East Asia IPR SME Helpdesk website: [www.southeastasia-iprhelpdesk.eu](http://www.southeastasia-iprhelpdesk.eu); or by contacting the Helpdesk confidential enquiry service: [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu).





## 7. SME case studies

### CASE STUDY 1

**Background:** A British industrial cleaning company is planning to sell its products on the South-East Asian market. It has no previous sales experience in the region, but its managing director has attended a few trade fairs in Singapore and Kuala Lumpur in the past year. As an innovative business, the company has quite a robust patenting strategy and, as such, has applied for an international patent (through the Patent Cooperation Treaty – PCT – but it should be noted that this was a few years ago and hence only Singapore and Vietnam have been designated). The company only has a trade mark registration in Europe (in the form of a Community Trade Mark).

The company's Managing Director will exhibit its newest technology (covered in their PCT patent application) in Singapore in six months' time, as two orders have already been placed by a Singaporean distribution company.

At the trade fair, the company finds a small distributor using a name almost identical to the name covered by its European registered trade mark. This party appears to have links to China and all of its exhibitor material is in Chinese.

**Action taken:** File a trade mark application in Singapore. The distribution company that has ordered goods from the European company will need to use, to some extent, the trade mark to promote the goods. This must be controlled through the use of a distribution agreement, which will also license the use of the trade mark to the distributor. Without a trade mark registration,

there would be nothing to stop the distributor or a third party (for example, a trade fair visitor) from applying for the same trade mark.

#### IP Lessons:

- The Singaporean trade mark registration could form the basis of the company taking action against the smaller distributor that is using a similar trade mark. Also, consider filing a trade mark in China.
- Be careful when discussing business with parties from countries in which you do not have patent protection. Whilst there is nothing you can do to stop such a company from reverse-engineering the product, clearly, it would be more effective to simply not sell the product to such a party in the first place.
- If the distribution deal will cover other South-East Asian countries, consider filing your trade mark in the key jurisdictions in the region, including China.
- Use the trade fair to gather information about your competitors. If you can improve on your own technology (and, of course, on the technology of other exhibitors) the 'new' jurisdictions in Southeast Asia (and China) should be incorporated into your (future) patenting strategies.
- Know the local rules: keep yourself informed about the accession of South-East Asian countries to international treaties that protect IP and consult with local lawyers to know how this could benefit your business.

### CASE STUDY 2

**Background:** A Slovenian company from the automotive industry that is exhibiting at the Automotive Trade Fair in Vietnam was aware that a Chinese company, which had been reported infringing its design in the past, would also be exhibiting at the same fair. The Slovenian company had checked the list of exhibitors before starting the exhibition and therefore had the time to be prepared, should any infringement occur during the fair. The company had prepared the original certificate of its design registration in Vietnam and identified a lawyer who could provide advice directly at the exhibition in case of need.

At the trade fair the Chinese competitor was displaying a model of a scooter with an almost identical design to the one owned by the Slovenian company.

**Actions taken:** With the help of the staff, the Slovenian company took pictures of the infringing products as well as brochures and other marketing materials. The SME called in the lawyer to advice on how to collect sufficient evidence of the infringement and which actions to be taken next.

**Outcome:** The Chinese company was served a notification letter during the trade fairs and was asked to remove the products infringing the design owned by the Slovenian company from the exhibition booth. Subsequently, a Cease and Desist Letter was sent and the case proceeded to settlement.

#### IP Lessons:

- Prepare in advance: know who will be participating at the same trade fair you will attend, identify if potential infringements may take place and prepare a copy of your IP certificates.
- Register your IP in the country where the exhibition takes place and also in the countries where you intend to trade.
- Use the help and support of a local lawyer to obtain advice on how to collect valid evidence and what options are available to you.
- Mediation and settlement can be sufficient to stop an infringement.

## 8. Related links and additional information

South-East Asia IPR SME Helpdesk - [www.southeastasiaiprhelpdesk.eu](http://www.southeastasiaiprhelpdesk.eu)

China IPR SME Helpdesk - [www.china-iprhelpdesk.eu](http://www.china-iprhelpdesk.eu)

European IPR SME Helpdesk - <https://www.iprhelpdesk.eu>

Latin America IPR SME Helpdesk - [www.latinamerica-ipr-helpdesk.eu](http://www.latinamerica-ipr-helpdesk.eu)

## 9. Glossary

**Copyright** - Copyright is a legal term which refers to the rights granted to authors, artists and other creators for their creations. Copyright entitles the owners of literary and artistic works to a set of exclusive rights over their works that they can assign to others.

**Counterfeiting** - Counterfeiting is the practice of imitating genuine goods, often of inferior quality, with the intent to take advantage of the superior value of the imitated product. Counterfeiting may violate protections under trade mark, copyright, patent or design laws. An example of counterfeiting would be selling products imitating genuine goods under a brand name without the brand owner's authorisation.

**Intellectual Property Rights (IPR)** - Intellectual Property Rights are legally enforceable rights over the use of inventions or other creative works. They confer a right to exclude others from their use. This includes patents and utility models, industrial designs (or design registrations), trade secrets, trademarks, Geographical indications and copyrights.

**Trade fairs** - Trade fairs are exhibitions which allow companies in a certain industry to showcase their products or services. Although companies can reap substantial benefits from attending a trade fair or exhibition in South-East Asia, SMEs should be aware of the associated risks from exposing their IP to potential infringers.

**Trade marks** - Generally speaking, a trade mark is a sign which serves on the market to distinguish the goods and/or services of one undertaking from the goods and/or services of others, and over which the owner has an exclusive right. Trade marks are words, logos, devices or other distinctive features which can be represented graphically. In some South-East Asia countries, such as Singapore, Vietnam and Thailand, they may also consist of the shape of goods or their packaging in three-dimensional form.

**Trade secrets** - A trade secret is any non-public information with actual or potential commercial value that is guarded by confidentiality measures. Trade secrets can ensure businesses an advantage over competitors but must remain a secret - once a trade secret becomes publicly known, it can no longer be protected as a trade secret. Most trade secret theft cases involve current or former employees.

**Patents** - A patent is an exclusive right granted for the protection of new inventions, which are products or processes offering new technical solutions or providing new ways of doing something. The product or process in question must have industrial application. Patent protection lasts for a limited period of time, usually 20 years. In return for this legal monopoly of limited duration, the owner of a patent must disclose the invention to the public.

**Small and Medium Enterprises (SMEs)** - SMEs are companies with less than 250 employees and with either a turnover of less than or equal to EUR 50 million, or a balance sheet total of less than or equal to EUR 43 million.



For more information on the protection of trade secrets in any South-East Asia country, please contact our free confidential helpline on [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu) or +62 21 571 1810.

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For more information please contact the Helpdesk:

15<sup>th</sup> Floor, The Landmark, 5B Ton Duc Thang Street,  
Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam  
T +84 28 3825 8116  
F +84 28 3827 2743  
E-mail: [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu)  
Website: [www.ipr-hub.eu](http://www.ipr-hub.eu)  
Blog: [www.yourIPinsider.eu](http://www.yourIPinsider.eu)

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The South-East Asia IPR SME Helpdesk provides free, business-focused advice relating to South-East Asia IPR to European Small and Medium Enterprises (SMEs).

**Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone or email ([question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu)), or visit us in person and receive free and confidential first-line advice within three working days from a South-East Asia IP expert.

**Training:** The Helpdesk arranges training on South-East Asia IPR protection and enforcement across Europe and South-East Asia, tailored to the needs of SMEs.

**Materials:** Helpdesk business-focused guides and training materials on South-East Asia IPR issues are all downloadable from the online portal.

**Online Services:** Our multilingual online portal ([www.ipr-hub.eu](http://www.ipr-hub.eu)) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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Guide Last Updated in October 2017