Doing Business in China :

Intellectual Property Protection

Presentation by the Canadian Trade Commissioner Service (TCS) in China

Canada

Roadmap for Today's Presentation

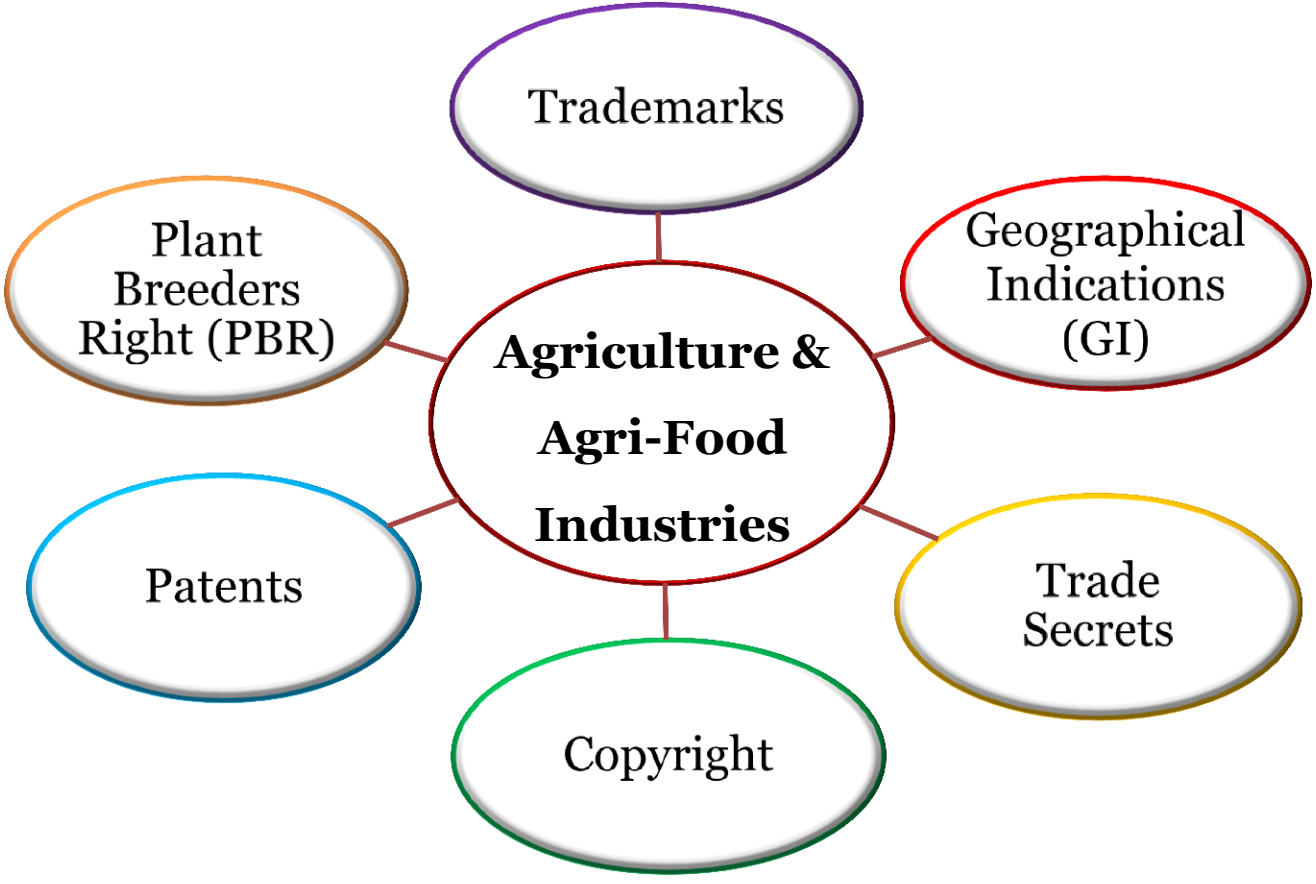
- Intellectual Property Protection: Status
- Types of IP in Agriculture and Agri-food Industries
  - Trademarks and Geographical Indications
  - Plant Breeders Right and Patents
- Enforcement

Intellectual Property Protection in China

- Legal framework for IP has developed rapidly
- Various methods of enforcement
- Intensive information campaign on IP

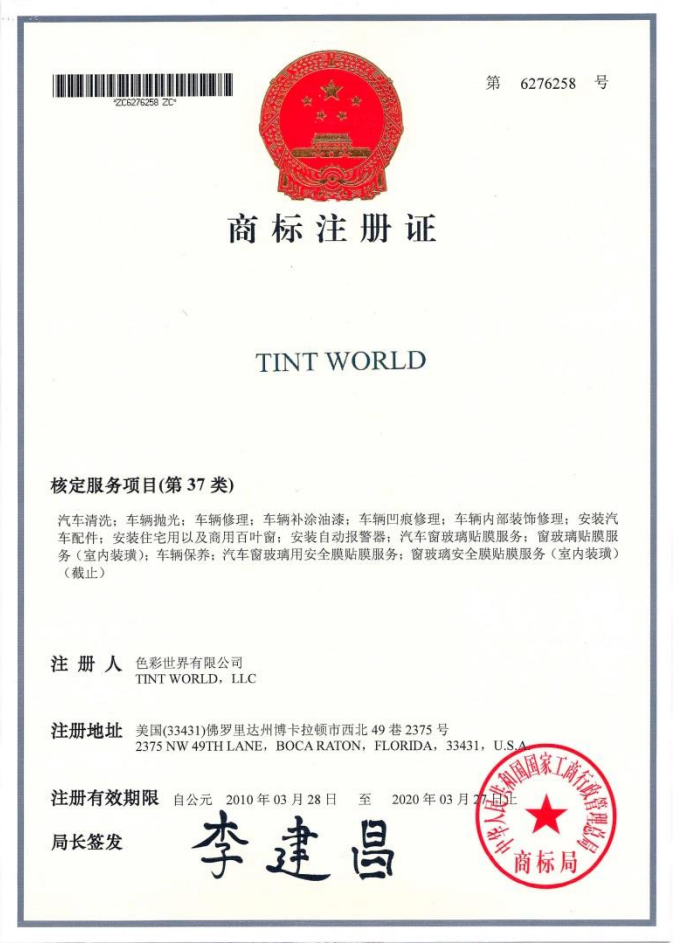
- Practical difficulty of enforcement
  - First-tier city vs. second- and third-tier cities
  - Place of dispute resolution

IPR: Agriculture & Agri-Food Industries



IPR: Trademarks & GI

- **Trademarks:**
  - First-to-file principle
  - Territorial right
  - 45 classes, and then subclasses (unique)
  - EN and CN are separate trademarks
  - Easy & cheap to apply, difficult & expensive to invalidate
- **Geographical Indications (GI):**
  - China Trademark Office (CTMO): Certification Trademark
  - Administration of Quality Supervision, Inspection and Quarantine (AQSIQ): GI



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注册有效期限 自公元 2010 年 03 月 28 日 至 2020 年 03 月 27 日止

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中华人民共和国国家工商行政管理总局 商标局

IPR: PBR & Patents

- **Plant Breeders Rights (PBR)**
  - New varieties of plants
  - Territorial Right
  - Application

植物新品种权证书

品种名称：茂绿丰

属或者种：猕猴桃属

品种权人：丹东茂绿丰农业科技食品有限公司

培育人：陈允斗

品种权号：CNA20100001.3

申请日：2010年1月7日

授权日：2016年1月1日

证书号：第 20166976 号

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部长：

- **Patents:**
  - First-to-file
  - Territorial Right
  - Application:
    - Patent Cooperation Treaty (PCT)
    - Apply for a patent in China

IPR: Case Study

CASTEL

卡斯特 (KA SI TE)

Takeaway Messages

- **Common problems affecting IP right holders:**
  - No IP rights registered in China
  - Rely too much on the local distributor/partners
  - IP issues are not clearly defined in the licensing, technology-transfer, or other business contracts

- **Take-away messages:**
  - Develop multi-layered IPR protection strategy
  - **REGISTER!**
    - Even if you're just getting started on e-commerce: register
  - Don't rely on local partners to register your IP—do it yourself
  - Hire a lawyer who practices law in China to help out

IPR: Enforcement

- **Administrative Enforcement**
  - State Administration of Industry and Commerce (SAIC)
  - China Intellectual Property Office (CIPO)
  - Ministry of Agriculture (MOA)
  - Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)
  - Customs
- **Civil Litigation**
  - Injunction to cease the infringements
  - Damage compensation
- **Criminal Enforcement**

IPR Summary

	Obtaining the right	Protection Period	Protection Scope	Enforcement
Trademarks	Registration	10 years extendable	Sign to distinguish products	Administrative Judicial
Geographical Indications	Registration		Geographical origin	Administrative Judicial
Plant Breeders Rights	Application	Trees: 20 Others: 15	New varieties of plants	Administrative Judicial
Patents	Application	Invention: 20 UM : 10 Design: 10	Technical solutions	Administrative Judicial
Trade Secrets	Self-protection	Infinite term	Known-how, business information, etc.	Judicial
Copyright	Automatic	Lifetime+ 50 years	Creative works	Judicial

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