PROTECTING YOUR TRADE SECRETS/IP FROM CHINA

THREE KEYS

- Structural protection
- Good contract
- Good registration
GOOD PARTNER

Due Diligence

- Can be illegal
- Can be faked

DUE DILIGENCE

- Distrust all company info
- Look around, ask around
- Scrutinize the paper
- Delegate. Do not delegate.
THE GOOD CONTRACT

THINK...

LIQUIDATED DAMAGES

WHY BOTHER WITH A CONTRACT?

Agreement

Prevention

Enforcement
WHY BOTHER WITH A CONTRACT?

WHAT ABOUT CORRUPTION?

DEAL/CONTRACT

Structure your deal and write your contract so that your Chinese partner believes it will make more money with you than without you.
LITIGATING OUTSIDE CHINA

Chinese courts have no obligation to enforce US, UK, Canadian, or Australian judgments

– and they don’t.

CHINA COURT REALITIES

Injunctive relief?

Yeah, maybe.
CHINA COURT REALITIES

DISCOVERY

What’s that?

EMPLOYEE CONTRACTS

Confidentiality/Trade Secret? YES

Non Compete? MAYBE

Non Solicitation? YES

IP Ownership? ABSOLUTELY
LICENSING AGREEMENTS

Make sure you get paid

Register with the proper government agency

Non Disclosure Agreements

Good Test

Make it an NNN
TRADE SECRET DEFINED

- Technical or business information unknown to the public
- Has economic value
- Trade secret owner has undertaken reasonable measures to maintain its confidentiality

UNFAIR COMPETITION LAW

- Liability for trade secret misappropriation:
  - Acquiring another’s trade secret by theft, inducement, duress, or other illegal means
  - Disclosing, using, or allowing others to use the trade secret of another acquired by illegal means
  - Disclosing, using, or allowing others to use a trade secret in breach of an agreement or a confidentiality obligation
  - A third-party acquiring, using, or disclosing a trade secret that he knew or should have been misappropriated in any of the above ways
OTHER TRADE SECRET LAWS

CONTRACT LAW  COMPANY LAW  LABOR LAW

TRADE SECRET CASE

PLAINTIFF HAS BURDEN OF PROVING:

Infringed information is a trade secret

Defendant is using information substantially similar to the trade secret

Defendant obtained information improperly