



Trademark and product piracy

How can you protect your products?

Spielwarenmesse eG helps you as far as possible to protect your products against trademark and product piracy.

You as exhibitor present your trademarks and products at Spielwarenmesse® and frequently for the first time as innovations. You then discover that your ideas and developments have been copied by counterfeiters. Spielwarenmesse eG wants to support you in your action against trademark and product piracy at the Spielwarenmesse®.

The most effective form of protection against copying and using your products and trademarks is the possession of special protection rights within the scope of intellectual property rights. The possession of such protection rights enables you to take effective and rapid action against the theft of your intellectual property, if necessary with the support of a lawyer. However, the protection of intellectual property rights only governs competition between the individual parties.

Due to the legal situation, Spielwarenmesse eG is not authorized or eligible to take independent action against the violation of protection rights.



■ What you can do **before the fair**:

Registration of protection rights

Register your trademark/product via the responsible office at an early stage. Make sure these property rights are also protected in Germany. The following protection rights can be registered in Germany:

■ **Patents**

Patents are granted for inventions that are new, based on inventive activity and suitable for industrial application.

■ **Trademarks**

All marks, especially words, illustrations or designs, that are suitable for distinguishing the products or services of one company from those of another company can be protected as trademarks.

■ **Utility model**

The “younger brother” of the patent can be used to protect all technical inventions – except processes and biotechnological inventions – quickly and at low cost for a period of maximum 10 years.

■ **Registered design**

A registered design can be used to protect a new design of products.

The German Patent and Trademark Office provides information about other aspects, forms and fees and this is also available on its Internet pages.

Deutsches Patent- und Markenamt
Zweibrückenstraße 12
80331 München, Germany
Phone: +49 89 2195-1000
Internet: www.dpma.de
E-mail: info@dpma.de

Presentation of protection registration documents

If you are the holder of protection rights, bring the registration documents for these rights with you to the fair, particularly registration certificates and records of extensions.

If you have already taken successful legal action against counterfeiters in the past, also bring evidence of such court rulings with you.

Action by customs authorities

If you, as the holder of a valid intellectual property right, fear that goods from non-EU countries which infringe your rights are scheduled to be exhibited at the Spielwarenmesse®, you can submit an application for the customs authorities to take action before the fair opens.

After your application has been approved, the German customs authorities will, for example, already investigate whether there is any suspicion of a legal infringement at the time when goods are cleared for exhibition at the fair.

In Germany, the agency responsible for processing applications for action by the customs authorities is the "Zentralstelle Gewerblicher Rechtsschutz (ZGR) der Generalzolldirektion" (Central Agency for Protection of Property Rights at the General Customs Directorate).

Further information assistance, application (online only) and a description of the procedure is available at:

Generalzolldirektion
Zentralstelle Gewerblicher Rechtsschutz
Sophienstraße 6
80333 München, Germany
Phone: +49 89 59952315
E-mail: DVIA24.gzd@zoll.bund.de

Application of action by customs authorities:
<http://www.ipr.zoll.de> (ZGR-online)

The responsible authorities of EU-member states are available at:
http://ec.europa.eu/taxation_customs

Another important practical tip:

Make sure you can contact your patent lawyer, lawyer or other persons in your company in possession of key information at the weekend, should this be necessary. During the fair lawyers will also be present and available at the fair ground (see info page 3).

■ What you can do during the fair:

Exhibition priority

Exhibition priority is granted for trademarks and other marks of products and services exhibited at the fair in accordance with § 35 German Trademark Law for the duration of the Spielwarenmesse®. Exhibition protection ensures that an exhibitor exhibiting a new article at the fair, for which he applies to the German Patent and Trademark Office for registration as a trademark or other mark within a period of 6 months of the date of the first presentation at the fair, can claim the right of priority within the meaning of the German Trademark Law from this date onwards. More information about this and the procedure is **available in Section Exhibition certificate**.

Infringement of the Rules for Exhibitors

Spielwarenmesse eG defines rules on product piracy in Section 12 of its Rules for Exhibitors, which every exhibitor agrees to comply with on signing the application form. These rules prohibit the exhibition of goods at the Spielwarenmesse® if their manufacture, placing on the market, sale, possession or advertising violates the laws on the protection of intellectual property or industrial property rights. In the event of non-compliance, Spielwarenmesse eG may – under the conditions stated in the rules – exclude an exhibitor from further participation in the Spielwarenmesse®. Please contact us in such cases.

Providing proof of counterfeits

If you as exhibitor have discovered a counterfeit of your product or trademark, you should first secure the necessary proof. Documentation of statements by witnesses is possible at any time. Photos are only allowed with the approval of Spielwarenmesse eG. You should also have the documents available for proving that the counterfeit product or trademark uses your intellectual property.

Warning

If you discover a counterfeit on the stand of another exhibitor, you can then issue a warning to this exhibitor and request him to provide a punishable declaration of forbearance. It is usually advisable to enlist the help of a lawyer (see also info below) for this purpose.

Interim injunction

If the exhibitor refuses to provide a declaration of forbearance and remove the product from his stand, you can enlist the help of a lawyer (see also info below) to obtain an injunction that prohibits the infringing exhibitor from continuing to exhibit, offer or sell the counterfeits. This interim injunction must be requested from the responsible court. If the interim injunction is issued, the exhibitor is legally prohibited within the scope of the filed application from continuing to exhibit or sell the counterfeits. An interim injunction issued by the court will be in force without limitation to the duration of the fair.

IPR Council – for the Protection of Intellectual Property Rights

The IPR Council at Spielwarenmesse® is a service at no charge offered by the fair organizer for the protection of intellectual property and facilitates **out-of-court** settlement of complaints concerning the protection of exhibitors' industrial property rights.

For further information see page 4 - 5!

Legal advice during the fair

An experienced law firm is available throughout the fair – including Saturday - end – and can be engaged to support you in protecting your rights:

■ Dr. Scholz & Weispfenning, lawyers

Phone: +49 911 24437-0
Fax: +49 911 24437-99
E-mail: kanzlei@scho-wei.de
(Changes possible)

The firm offers the following services on all days of the fair:

- Advice and support in asserting your rights to trademarks, design rights, patents and utility models and in taking action against unfair trading practices of your competitors.
- Help with extrajudicial and judicial defence against unjustified claims lodged against you.



You can naturally appoint other lawyers to represent your interests. Spielwarenmesse eG can provide the names of other lawyers via the chambers of lawyers and patent lawyers. These are lawyers working in the field of international intellectual rights protection and speak English if appropriate.

The above information has been prepared to the best of our knowledge and belief, but is not intended as a substitute for legal advice.

IPR Council – for the protection of intellectual property rights

1. What is the IPR Council?

The IPR Council (Intellectual Property Rights Council) at the Spielwarenmesse® is a service for the protection of intellectual property and facilitates **out-of-court** settlement of complaints concerning the protection of exhibitors' industrial property rights. The purpose of the council is to clarify **violations** of such rights by products exhibited and/or offered ("exhibits") by other exhibitors during the fair.

The organizer's intention is that the IPR Council helps to resolve such disputes **between the parties involved without delay and without adversely affecting the course of the fair.**



IMPORTANT: Please make sure you carry out the preparation before the fair according to form, Trademark and product piracy!

2. The members of the IPR Council

The arbitration body of the IPR Council comprises two competent and experienced personalities: **Prof. Dr. Wolfgang Schaffert, retd. judge at the Federal Court of Justice (Chairman of the IPR Council)** and **Ulrich Brobeil, Lawyer and DVSI Managing Director.**

3. The procedure

The procedure is voluntary for all exhibitors. An exhibitor wishing to initiate the procedure must accept the terms and conditions.

If an exhibitor has a justified reason to fear that another exhibitor is violating his industrial property rights, he may appeal to the IPR Council. The IPR Council will accept complaints from 9 am to 4 pm daily for the duration of the Spielwarenmesse®.

Please report your complaints in NCC West, floor 1, to the OrganizersLounge.

Complaints must be made in writing as shown on the specimen forms on display.

The application must be accompanied by valid registration documents for the protection rights claimed, particularly registration certificates and records of extensions, in order to prove the validity of the protection rights in Germany.

The IPR Council then requests the accused exhibitor to participate in settling this dispute out-of-court and to accept the terms and conditions of the procedure in writing. If the accused exhibitor accepts, he will also be offered the opportunity to comment on the complaint. The IPR Council may then inspect the accused exhibitor's stand and is authorized to take photographs of the exhibit that is the subject of the complaint.

If the accused exhibitor declines to consent to out-of-court settlement of the dispute, the IPR Council will notify the complainant and the Fair Management accordingly. The dispute is not settled out of court in this case.

4. Decisions and recommendations of the IPR Council

The IPR Council investigates the complaint and makes its judgement and recommendations on an equitable basis.

If the complaint is justified in the opinion of the IPR Council, it advises the accused exhibitor to remove the exhibit concerned for the duration of the fair and to promise the complainant not to exhibit and/or offer the exhibit in any way for the remaining duration of the fair.

The accused exhibitor is then obliged to sign an appropriate undertaking if he wishes to avoid the possible imposition of sanctions by Spielwarenmesse eG.

5. Disclaimer

In accordance with the terms and conditions of the IPR Council, Spielwarenmesse eG, the Fair Management staff and the members of the IPR Council are exempted from liability of any kind in connection with the execution of this procedure for settling disputes out-of-court.

6. Sanctions

Spielwarenmesse eG reserves the right to exclude the accused exhibitor, if applicable, from all further fairs and events of Spielwarenmesse eG – particularly the Spielwarenmesse® – in accordance with the procedural conditions of the IPR Council.

7. Miscellaneous

This procedure for this out-of-court settlement of disputes in no way excludes recourse to the general courts of law. The regulations of the IPR Council are available in several languages. The German language version shall prevail in the event of uncertainties in the interpretation of these regulations.