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You can't sue 'em if you can't serve 'em, U.S. companies find

JEFFREY GOLD; The Associated Press

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NEWARK, N.J. – When an American scooter maker lost patience with cheaper Chinese-made models flooding the U.S. market, it filed an antitrust lawsuit.

Patmont Motor Werks Inc. accused the Chinese government and companies there of making it impossible for the Minden, Nev.-based company to sell its products to Chinese. One aim of the lawsuit was to open China's doors to American-made products.

That improbable goal is now in ashes, when Patmont's lawyers couldn't even track down the companies they were suing to serve them court papers.

An increasing number of companies and individuals are likely to face similar frustration. The flood of Chinese imports has triggered a growing number of lawsuits, but individuals and companies often find it impossible to win damages or other legal redress, especially for lawsuits filed overseas. Foreign companies are also filing lawsuits in Chinese courts, and occasionally winning, against local companies caught violating trademarks, copyrights and patents.

TOO MUCH CLOUT

The legal obstacles are unlikely to be removed soon, although China has pledged to curb its mounting trade surpluses with the U.S. and has carried out a nationwide campaign to improve product quality and safety.

Within a decade, however, China is likely to conform more closely to international legal standards, said Gary Hufbauer, a China expert at the Peterson Institute for International Economics, a Washington, D.C., think tank.

"The drift is clearly toward a normalized situation," he said.

Current obstacles arise because the lawsuit targets are often companies that are partly owned by the Chinese government or its army, or are allied with provincial governors, said Hufbauer. As a result, their clout can outweigh efforts by the trade ministry to adhere to international agreements, he said.

In addition, he said the Chinese government sometimes obstructs litigation to retaliate when it believes the U.S. or the European Union is "poking it with a stick."

Washington's growing impatience over Chinese trade practices has prompted dozens of retaliatory bills in Congress, as the U.S. trade deficit with China for 2007 is expected to exceed a record \$250 billion. The U.S. lawmakers view 2008 – when China hosts the Olympics – as an opportunity to highlight their grievances.

Experts in international law say they know of no case in which Americans collected any money from a verdict or a court order against a Chinese company, although some have been paid through settlements.

A federal judge dismissed the Patmont lawsuit 2 1/2 years after it was filed because Patmont had been unable to deliver it to the defendants, as court rules require.

The failure wasn't for lack of trying, said a Patmont lawyer, Brian Irvine.

"It's like the Whac-A-Mole game. Once you serve them at one address, you get a letter back saying they are not there," Irvine said.

Patmont founder Steven Patmont said the lawsuit convinced some American companies to stop selling the Chinese-made knockoffs, but that China has failed to adhere to trade agreements and his company has barely survived a tenfold drop in sales since 2000.

"They were allowed to come into our country," Patmont said. "But they did not lower their trade" barriers. As a result, Patmont's Go-Ped motor scooters face a 167 percent markup in China he said, due to a 150 percent tariff and a 17 percent

value-added tax.

‘THE TIP OF THE ICEBERG’

While the number of lawsuits pending isn't available, experts say lawsuits against Chinese companies are proliferating, asserting claims of product piracy, impure ingredients and unsafe products.

“My sense is, we're just seeing the tip of the iceberg,” said Michael Lyle, a Washington-based lawyer at Weil, Gotshal & Manges who represents companies in product liability and trade cases. “Because of our global economy, and the fact that China is a major player, you are going to be seeing more of these cases.”

Most Chinese companies have no assets in the United States, so they have no trouble ignoring a U.S. court order.

“There is no treaty between the United States and China that requires the enforcement of each other's judgments,” said Lyle, a former Clinton White House official.

Chinese companies aren't the only tough lawsuits; judgments are difficult to enforce in Russia, Lyle said. In contrast, the judgments of U.S. courts face smoother sailing in Canada and the United Kingdom, he said.

The expansion of Chinese companies into global markets, with offices and operations in the U.S. and elsewhere, could give them greater incentive to cooperate in legal proceedings, Lyle said.

But until then, Chinese companies will assert that U.S. courts have no jurisdiction.

That's what happened after lawyer Jeffrey Killino filed a class-action lawsuit in U.S. District Court in Camden, N.J., against a Chinese tire maker on behalf of people who claim they were hurt by defective products.

Hangzhou Zhongce Rubber Co. countered that the lawsuit should be dismissed because the manufacturer doesn't do business in the United States.

Hangzhou Zhongce, whose products are sold through U.S. distributors and were subject to a recall last year, withdrew the motion after the judge decided to gather evidence regarding jurisdiction. The issue is pending.

A U.S. distributor, Foreign Tires Sales Inc. of Union, N.J., said in August that it would recall 255,000 of Hangzhou Zhongce's tires. The National Highway Traffic Safety Administration ordered the recall after the distributor said some were made without a safety feature that prevents treads from separating. Hangzhou Zhongce has said it found no evidence of structural defects or missing safety features.

Killino, of Woloshin & Killino in Philadelphia, said there are times when the expense and effort of suing a Chinese company make it more logical to focus on U.S. companies doing business with them. That was his strategy in August, when he sued California-based Mattel Inc., claiming the world's largest toy maker should pay for testing to determine if children have been exposed to lead from millions of recalled toys. The case is pending.

“Naming a Chinese defendant in that case could slow the case, and we have so much to recover from Mattel” and others, he said.

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