

# Don't Pick Fights in China

**In China, it's always best to resist the temptation to make snap decisions. I call this the cold shower approach to decision making. Just when you think you know enough to make a decision, take a cold shower and think some more before acting. This is particularly true when you are about to get into a dispute.**

By Jack Perkowski



Over the past few years, the challenges of running a business in China have been underscored by two very visible, high-profile disputes. The first involved Group Danone and Wahaha, the foreign and local partners in what had been regarded for many years as a showcase joint venture in China. After establishing a joint venture in 1996, French firm Danone, one of the largest food companies in the world, and Wahaha, a highly successful Chinese beverage company, built a very profitable USD 1.5 billion beverage business in China together.

Unfortunately, the two partners came to blows in 2007 when Danone confronted Wahaha's founder over

While the circumstances surrounding each dispute were different, there are many similarities. Both Danone and Google are highly successful global companies that were forced to withdraw from large and promising businesses in China. Each company chose to make its dispute public, and each was large enough to enlist the support of its home country's most senior leaders. Each dispute also raises a number of questions.

If such large companies with strong government support can't resolve their disputes in China, what chances do smaller enterprises have? Did Danone

**"The Chinese do not like confrontation. It's better to discuss sensitive issues behind closed doors and not to make any public statements"**

a parallel set of companies that he had created in competition with the joint venture. When Danone took the founder to court, it touched off an intense legal battle in both China and the US that ultimately resulted in Danone exiting the joint venture. Not even the intervention of France's President Nicolas Sarkozy could save the day.

More recently, Google announced on its official blog that it would no longer abide by China's censorship rules and was considering exiting China. US Secretary of State Hillary Clinton publicly supported Google's position and urged China to reconsider its rules. Subsequent negotiations between Google and China went nowhere, causing Google to make good on its threat to abandon the China search market.

and Google go about the process of resolving their respective grievances in the right way? What lessons can be learned? Based on my long experience in China, I suggest the following five rules for resolving disputes in the country.

**Rule No. 1: Keep in mind the age-old axiom that an ounce of prevention is worth a pound of cure**

The best way to resolve disputes in China is never to get into them in the first place. In this regard, patience is a virtue. In China, it's always best to resist the temptation to make snap decisions. Just when you think you know enough to make a decision, take a cold shower and think some more before acting. It might have helped Google.

**Rule No. 2: If a dispute arises, listen carefully and make every effort to understand your counterpart's position**

This might also be considered a corollary to Rule No. 1. If you find yourself in a dispute, it is imperative that you listen extra hard and try to understand where your counterpart is coming from. This is difficult because Chinese tend to keep their cards close to their vests and will not often tell you exactly what's on their minds. That's when a capable, loyal Chinese staff and management team are invaluable. They can help you to better understand the issues and to reach a compromise. I believe that Danone could have benefited from following this rule.

**Rule No. 3: Resolve to settle your differences through friendly negotiations**

The Chinese do not like confrontation and conflict and value stability and harmony. It may take a long time and a great deal of patience, but settling disagreements through listening, continued dialogue, and negotiations with your Chinese counterpart is by far the best way to go. Both Danone and Google might have had different results if they had followed this rule.

**Rule No. 4: Enlist the support of individuals and organisations that may act as intermediaries**

Depending upon the circumstances, local government officials, individuals who are well respected by either side, or officials from the foreign company's home country can often help to bridge differences. Local government officials want harmony in their city and stand ready to help. Likewise, embassy officials are charged with looking after their citizens and will also pitch in if need be.

Danone followed this rule effectively when it convinced President Sarkozy to discuss the Wahaha issue with China President Hu Jintao while on an official state visit to China in November 2007. When Google enlisted the US Secretary of State to make a public statement on its behalf, it elevated its dispute to the highest levels of both governments, making it virtually impossible for China to compromise. It's better to discuss sensitive issues behind closed doors as President Sarkozy did.

**Rule No. 5: Always remember that going to court is truly the court of last resort**

While litigation is a common strategy in other parts of the world, it is usually a mistake in China. It's not because

and encouragement of the local government made claims against us and took us to arbitration. The case wasn't credible and we won rather easily. At all times, the local government was on our side, so enforcement wasn't an issue.

My best advice on legal actions in China is to avoid them at all costs and use them only as a last resort. The outcome is uncertain, and it will take a long time – no matter what. All three of our arbitration cases were open and shut according to any objective legal review, but it still took a year to go through the arbitration process. If a court has to then enforce the award, a couple of years can easily be added.

**“The best reason to avoid legal action is that once a company goes down that path, all other avenues for resolving the dispute are foreclosed”**

China does not have a legal system, but because the difficulty lies in enforcement.

Over the years, I have been involved in three arbitrations in China, all of which took place in the International Arbitration Tribunal in Beijing, comprised of both Chinese and Western judges.

In the first case, we were new to the game and thought winning in arbitration was everything. With a favourable ruling in hand, we marched off to court to have the ruling enforced – only to find that our Chinese partner already had the system wired. Despite several years' worth of effort, we got nowhere.

In the second case we also prevailed in arbitration. But this time, we were smarter and had lined up support from the local government ahead of time. Armed with a favourable ruling, we asked the local Party Secretary to help and got what we wanted in one meeting presided over by him. We never even had to go to court.

In the final case, a Chinese partner that we had bought out with the blessing

Perhaps the best reason to avoid legal action in China is that once a company goes down that path, all other avenues for resolving the dispute are foreclosed. When arbitration or a lawsuit is filed, the local and provincial government officials, who might otherwise be counted on to help, will take the position that the matter is being resolved through the legal system and will not wish to interfere. When the legal gauntlet is thrown down, a company has no choice but to see it through to the end.

It's impossible to do business in any country and not become involved in disputes with partners, customers, suppliers, employees, or regulators at one time or another. China is no exception. But if you remember these five rules, you will find yourself involved in fewer disputes, and those that do happen will be resolved with less damaging consequences to your business. ■

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