

Colour combinations in China

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“A colour combination mark is usually associated with goods, and the real form of the colour in use can be changed according to the shape of the products.”

Deere & Company is a registrant of a colour combination mark in China in respect of tractors, harvesting machines and related goods. Deere sued JOTEC International Heavy Industry (Qingdao) Co Ltd and JOTEC International Heavy Industry (Beijing) Co Ltd for infringing Deere’s right to the colour combination mark.

The court ordered the two defendants to stop infringement, and pay RMB450,000 (\$74,000) for Deere’s damages and other reasonable fees. This is the first court ruling on infringement on an exclusive right to use a registered colour combination mark since it was included in the scope of protection by the current Trademark Law in China.

Deere founded its subsidiary company in China in 1997, and since then has produced tractors and harvesting machines which all use the colour combination of “green body, yellow wheel”. China’s Trademark Office granted approval of Deere’s registration of its colour combination mark (upper portion in green, lower portion in yellow) in international classes 7 and 12 in respect of the goods “tractors, harvesting machines, lawnmowers, agriculture machines, etc” on March 21, 2009.

Deere claimed that it had always used the colour combination mark on its harvesting machines. The mark had become Deere’s important identification and was well recognised by consumers and industry experts, and was very distinctive and famous. Deere found that the two defendants had used the same mark on their products during production, sale and promotion on their websites since 2011, which constituted infringement upon its exclusive right to use the registered mark. Deere also claimed compensation and reasonable expenses of RMB500, 000 (\$83,000).

The two defendants argued that Deere’s mark was a design mark with two colours claimed, not a colour combination mark, and that the colours they used on their products were different from those in Deere’s mark, and therefore would not mislead consumers.

Beijing No. 2 Intermediate Court opined that the use of a colour combination mark is usually associated with goods, and the real form of the colour in use can be changed according to the shape of the products. In the registration application form filed with the China Trademark Office, Deere expressly explained that the mark was a colour combination mark, and also submitted a written specification indicating the specific position and composition in which the colours were used, namely “green for the body, yellow for the wheel”.

The position and composition of the colours used in the harvesting machines the two defendants produced and sold were the same as those of Deere's products, and the colours were almost the same. Accordingly, on December 24, 2013, the court ruled that the two defendants should stop infringement and pay damages.

Judicial rulings on the Internet

On November 21, 2013, the Supreme People's Court of China promulgated Regulations of Publications of Judicial Rulings on the Internet, which came into effect on January 1, 2014.

The Supreme People's Court of China set up a website (<http://www.court.gov.cn/zgcpwsw/>) for publications of effective judicial rulings made by people's courts at different levels across China. Judicial rulings, except for those related to national secrets, private secrets, juvenile delinquency, or concluded through mediation, must be uploaded by designated staff of the courts to the website within seven days after the rulings become effective. The regulations also stipulate that published rulings are irrevocable and irreplaceable.

Following the recent trend of reforms promoted by the ruling party and the central government, this measure of openness will significantly enhance the public's right to know and help to safeguard judicial justice under the public's supervision.

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