

2D trademark helps to protect 3D bottle shape

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Changsha Intermediate People's Court holds that the alleged infringing product and the Plaintiff's registered trademark both exhibit a bottle shape with round shoulder and short neck. The bottle contours of the alleged infringing product and that of the Plaintiff are hardly different visually. Although the Plaintiff's registered trademark is two-dimensional and the alleged infringing product is in three-dimensional shape, in view of the popularity and distinctiveness of the genuine product of the Plaintiff, it is still likely that the relevant public may assume the origins of the alleged infringing product have certain association with the Plaintiff, which constitutes similarity according to the Trademark Law.

THE ABSOLUT COMPANY AKTIEBOLAG (hereinafter referred to as TAC) is the owner of the series of trademarks “绝对” (absolute in Chinese) and “Absolut”, including the two-dimensional trademarks: No. 3377850 (Figure 1) and No. 4448681 (Figure 2).



(Figure 1)



(Figure 2)

TAC found in the market an infringing product named “Success Vodka”, which not only uses the infringing trademark of “Success Vodka”, the blue fonts and a decoration that is very similar to those of TAC, but also uses the same bottle shape as Absolut Vodka.



(Front)



(Back)

On April 15, 2013, TAC filed a lawsuit against the infringing manufacturer and distributor on the ground of trademark infringement and unfair competition to Changsha Intermediate Court.

The Court noted many similarities between the infringing product and TAC's registered trademark but more importantly, considered that the two-dimensional bottle shape trademark of TAC, was infringed by the three-dimensional product. The Court ruled that, in view of the similarity of the picture and shape, and in view of the popularity and distinctiveness of the genuine product of the Plaintiff, it is still likely that the relevant public may assume that the alleged infringing product has certain association with the Plaintiff, which constitutes similarity according to the Trademark Law.

On May 26, 2014, the Court rendered a judgment upholding the Plaintiff's claims, ordered the Defendants to stop the infringing acts and to compensate the Plaintiff's losses.

Comments

In China, it is not easy to obtain the registration of a three-dimensional trademark. The authorities tend to apply strict criteria in reviewing the three-dimensional trademark applications. So, only a small number of three-dimensional trademarks are able to be granted registration.

Even if the right owner manages to obtain a three-dimensional trademark registration, it is never easy to enforce it in practice. On one hand, the standards for determining the infringement of three-dimensional trademarks vary in the administrative enforcement and judicial trial. On the other hand, the three-dimensional trademark is often subject to invalidation actions from the infringers who challenge the validity of the trademark. Therefore, protecting and enforcing a three-dimensional trademark is fairly difficult in China.

In this case, it was possible to use a two-dimensional trademark registration, which represented an object (the bottle) as if it was a three-dimensional trademark covering the shape of the bottle. This is an exemplary case, which should serve as a model for the future.

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