

Pétrus wine scores victory in copycat dispute

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- French wine estate Pétrus sued the defendants on the ground of unfair competition and trademark infringement
- The court found that the trade dress of the Pétrus wine had gained a “certain level of recognition” in China and should be protected
- Although Pétrus had no registration for the Chinese transliteration ‘柏翠’, the scope of protection of the English-language mark could be extended to the Chinese mark

Background

Pétrus is a world-renowned French wine estate located in Bordeaux’s ‘Pomerol’ appellation. Known for producing one of the most prestigious and sought-after wines in the world, it is particularly famous for its exceptional Merlot-based wine, which has been deemed as one of the top wines in the world.

The label of the Pétrus wine is one of the most iconic and distinctive in the wine world, having changed little over the decades. The distinctive aesthetic of the label is dominated by a large intricate medallion representing Saint Peter (Pétrus) holding the keys to heaven and the letters ‘PETRUS’ in red.

Pétrus is the owner of the trademark PETRUS, registered in China in Class 33. The transliteration of Pétrus in Chinese, ‘柏翠’ (‘Bai Cui’), which does not carry any particular meaning, could not be registered in China due to the obstacle of similar earlier trademarks. However, such transliteration was used in the wine trade and became rapidly associated, in the minds of the consumers, with the famous Pétrus wine.

In 2021 Pétrus discovered that a Chinese company, Beijing Baicui Chateau International Import & Export Co Ltd (‘Beijing Baicui’), was selling bottles of red wine using a label reproducing the visual elements of its iconic trade dress, as shown below:



It was found that Beijing Baicui had successfully registered a trademark containing the Pétras transliteration ‘柏翠’ by adding three characters (‘莫埃尔’) and Latin words to form ‘柏翠莫埃尔BAICUIMOEL’. However, Beijing Baicui used only ‘柏翠’ (‘Bai Cui’) as its trade name and in its promotion materials.

Moreover, to further mislead consumers, Beijing Baicui appropriated Pétras’ brand story and accolades as its own in its promotions. For example, it falsely claimed that the allegedly infringing product was the "King of Wines", the "Top of the Bordeaux Big 8", the "Wedding Wine of Queen Elizabeth II" and the "Wine Presented to the White House by the Kennedy Family".

In 2022 Pétras sued Beijing Baicui and its distributor before the Chaoyang District Court of Beijing on the ground of unfair competition, namely, infringement of the trade dress of its bottle label and false advertising. It also claimed trademark infringement due to the use of the transliteration of its registered trademark.

First and second-instance decisions

The first-instance court confirmed that all the above grounds could be established.

Trade dress infringement

While the sales volume of Pétras wine may not be very large in China due to its rarity, considering its high reputation in the wine industry and the number of articles published about it in various media, the court found that the trade dress of the Pétras wine had gained a “certain level of recognition” in China, as provided by the law, and should thus be protected. The court further found that the trade dress of Beijing Baicui’s wine was very similar to that of Pétras in terms of layout, colour scheme, font and key device elements and that, therefore, Beijing Bai Cui had committed acts of unfair competition.

Trademark infringement

The court found that, although Pétras had no trademark registration for the Chinese transliteration ‘柏翠’ in China, given the

high reputation of the English-language mark PÉTRUS in China and the general perception among Chinese consumers that '柏翠' is the Chinese counterpart of Pétrus, the scope of protection of the English-language trademark could be extended to the Chinese mark. Therefore, trademark infringement was also established.

False advertising

The court was satisfied that Beijing Baicui's bad faith in appropriating Pétrus' brand story for its own use was obvious and that such behaviour constituted an act of unfair competition.

Outcome

The Chaoyang District Court ordered the cessation of the above acts and awarded Pétrus damages. The defendants later appealed before the Beijing Intellectual Property Court, which upheld the first-instance decision.

Comment

This case demonstrates that, in instances of obvious malicious infringement, the Chinese courts are willing to assess infringement in a more flexible manner. In this instance, the court decided that the foreign registered name was protected against the use of its transliteration, even though such transliteration was not registered as a trademark in China. Therefore, when dealing with a full-scale imitation of trademarks, trade dress or brand stories, rights holders should underline the bad faith of the imitator and leverage it to seek more effective protection. This once again reinforces a key principle in trademark law: the more extensive and consistent the use of a trademark, the stronger the protection it may receive.