


Same-name Trademarks Spark Strife

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Airbus Deutschland GMBH, the German branch of Airbus, the world's leading airplane maker, recently failed in the first round of a legal dispute that accuses a Chinese food maker of trademark infringement of its Airbus trademark.

According to the airplane giant, formerly named DaimlerChrysler Aerospace Airbus, Airbus Group in September 1986 applied for trademark protection and received approval to use the Airbus name on its airplanes and related components.

But Airbus Deutschland GMBH in 1998 discovered that a similar trademark was used for food and chocolate-based products in China.

Shenyang Yongfeng Food Inc, based in northeastern China's Liaoning Province, was a candy, chocolate and cocoa-related food maker.

According to a source from *Shenyang Daily*, the company on July 1998 applied for the names "Kongzhongkeche" (which contains four Chinese characters of the Chinese translation of Airbus), "AIRBUS" and a special logo for its food products as the trademark for the company and its products.

China's Trademark Review and Adjudication Board (TRAB), under the State Administration of Industry and Commerce, later approved the trademark of "Kongzhongkeche AIRBUS" and specified that the trademark could be used only on candy, chocolate and cocoa-related products.

However, after the State Administration of Industry and Commerce published the approved trademark for Shenyang Yongfeng Food, Airbus Deutschland GMBH objected to the decision.

After an investigation of the two trademarks lasting several months, TRAB ruled in favor of the Kongzhongkeche AIRBUS trademark for Shenyang Yongfeng Food.

According to TRAB, the trademark of Kongzhongkeche AIRBUS is used on confectionery and cacao products, which are distinctive from those used on Airbus Deutschland GMBH's airplane and related component products.

The Chinese agency ruled that consumers would not be confused.

However, Airbus Deutschland GMBH was not satisfied. According to a spokesman for the company, the trademark of Airbus was created by Airbus Deutschland GMBH. The company argued that its trademark is unique, used widely around the world and has a positive reputation.

Soon after TRAB issued its final judgment, the Hamburg, Germany-based company filed a lawsuit in Beijing No 1 Intermediate Court to request cancellation of the Kongzhongkeche AIRBUS trademark.

On August 4, Beijing No. 1 Intermediate Court ruled in favor of the Chinese company, saying the trademark in question was used for food products that obviously are different from airplane products.

"Even though the Airbus trademark has high recognition, the relevant public will not be confused," according to the court.

Another issue in the case was whether the Airbus trademark was a "resounding" trademark in China's market when Shenyang Yongfeng registered the Kongzhongkeche AIRBUS trademark.

According to the law of trademark registration, the qualifications for forming a resounding trademark in China should depend on the reputation to local consumers, the time it used in local markets and the grade and range of the promotional work for the trademark.

The court ruled in the Chinese company's favor on this issue, too.

"According to the information that Airbus Deutschland GMBH provided for its trademark, it cannot prove that when the Yongfeng's trademark obtained its registration, Airbus had already been a resounding name in the local market," the court ruled.

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During a recent telephone interview with a senior employee from Airbus China, the company declined to comment about the lawsuit.

Dong Ling, an instructor at the School of Law at the University of International Business and Economy, told China Business Weekly during a recent interview that adopting a product name similar to that of a well-known brand can benefit a company.

"No doubt, using the trademarks that were associated with identifying goods from the international market would attract consumers' attention and be helpful for the business operation," Dong said.

"Sometimes similar trademarks will lead not only to legal disputes, but also result in unfair business competition, which is not good for building a healthy market," Dong added.

(China Daily October 13, 2009)

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