

## **First Court Decision on Registerability of 3-D Mark**

On December 23, 2005, the Beijing No. 1 Intermediate People's Court made the first instance decision on registerability of a three-dimensional trademark application by upholding the decision made by the Trademark Review and Adjudication Board, which refused the application for registering a 3-D trademark filed by the Coca-Cola Company in respect of its "Fanta" beverage bottle design.

The TRAB ruled that the "Fanta" beverage bottle design was relatively simple and could not be easily distinguished from other ordinary beverage bottles. The 3-D mark does not have distinctiveness in its entirety.

The Coca-Cola Company argued that the applied mark for "Fanta" beverage bottle design was different from ordinary bottles for beverage. The 3-D mark features on its serrated circling ridge in the lower part of the bottle, which is dominant and makes the whole design different from ordinary bottles. It also argued that this uniquely designed bottle had been used for a long time and is famous among Chinese consumers. The consumers have established association between the design and the products of Coca-Cola Company. Moreover, the design has been accepted for registration as a 3-D mark in many other countries, which proves sufficient distinctiveness of the mark.

The court ruled that the 3-D mark is not distinguishable from ordinary bottle although it contains the serrated circling ridge in its lower part. The whole design of the bottle is not easy to catch the eyes of consumers and therefore can not be easily distinguished visually from other bottles.

This was the first court decision on registerability of 3-D mark in China.

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