

First Court Decision on Registerability of Colour Mark

In January 2002, a Swedish company filed a trademark application with the Trademark Office for registration of its trademark containing a colour combination of orange and blue on goods of saw blade. In August of the same year, the application was refused on the ground that the colour combination is too simple to be distinctive as a trademark. Dissatisfied with the refusal, the Swedish company filed a review application with the Trademark Review and Adjudication Board, which upheld the decision of the Trademark Office.

Not satisfied with the decision made by the TRAB, the Swedish company brought an administrative action before the Beijing No. 1 Intermediate People's Court, arguing that the colour combination was not generic on goods of saw blade, and that it had obtained a certain reputation as a mark on saw blade through use in commerce.

The court held that combination of colour could constitute one form of trademarks; however, like other types of marks, it should possess distinctiveness to be qualified for registration. The plaintiff's mark was formed with the combination of only orange and blue, which was too simple to distinguish the origin of goods. In addition, the evidence provided by the plaintiff could not prove that the applied trademark had acquired distinctiveness through use and become very famous. For the above reasons, the court upheld the decision made by the TRAB.

This was the first court decision on registerability of colour mark in China.

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