

Latest Court Decisions

2019:

[February]

• [envie CHANPAGNE GRAY Case \(Cancellation Suit\)](#)

IP High Court 2019.2.6 H30(Gyo-Ke)10124

[SUMMARY/INTRODUCTION]

A Japanese corporation (the Plaintiff) registered the trademark “**envie CHANPAGNE GRAY**” in English and Katakana characters for the goods “eyeglasses, electronic publications, application software” in Class 9.

envie CHAMPAGNE GRAY
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The subject trademark registration was invalidated by the trial board of the JPO through the invalidation trial filed by a French organization (Defendant), Comité interprofessionnel du Vin de Champagne (CIVC), since the subject trademark was registered by violation of public order and morals (Article 4-1-7 of the Trademark Law).

The Plaintiff brought the case before the IP High Court demanding cancellation of the JPO’s trial decision.

The Plaintiff was using the subject trademark “envie CHAMPAGNE GRAY” for contact lenses as a color indication, Champagne gray color, because the French dictionaries and English dictionaries described “Champagne” as Champagne color like “Champagne gold” and therefore, the Plaintiff insisted that the subject trademark was not registered against public order and morals.

What was the Court decision ?

[Court Decision]

The IP High Court sustained the trial decision. The Court said that “Champagne” obtained the world-widely high fame and trust as the sparkling wine made in the Champagne Region in France and thereby it became the cultural products of France and French people.

When such a name was used as a trademark for its specified goods, it would harm the national sentiment of the Defendant, CIVC, representing wine manufacturers in the Champagne Region as well as of the French people who protecting the fame, credit and reputation of “Champagne” by French laws.

As the result, it might have undesirable effects on the friendly relation between Japan and France and therefore, there was a great possibility that the subject trademark would be contrary to international faith and would lose the common interest of both countries.

As to the Plaintiff's allegation that the subject trademark was being used as a color indication of contact lenses, the Court said that the Champagne color was not unified to the specific one color since "green yellow color", "yellowish-brown color" and "amber" were used as Champagne colors. These colors with the word "Champagne" expressed the colors figuratively by reminding of Champagne that meant the subject trademark gave the consumers the image of sparkling wine made in the Champagne region.

【Comments】

We disagree with the IP High Court decision.

The Plaintiff did not insist that the Champagne color was one kind. The Plaintiff stated that the colors such as "green yellow color", "yellowish-brown color" and "amber" were commonly called as a "Champagne" color and therefore, the word "Champagne" became a general color indication in Japan.

In fact, the word "Champagne" had been widely used in Japan to indicate a kind of colors similar to Champagne color for various goods.

Therefore, when the subject trademark also containing the color word "GRAY" was used for contact lenses, the Japanese consumers would simply understand that the color of the contact lenses were Champagne gray color. Such imagination by Japanese people would not harm the fame and trust of French country and people as well as the international relation between Japan and France.

In addition, Article 24 of Section 3 "Geographical Indication" of the TRIPS Agreement provides about the "International Negotiations; Exceptions". Especially, Article 24 (6) provides as follows.

Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member.

The Plaintiff submitted as evidence copies of the dictionaries issued before January 1, 1995, on which the TRIPS Agreement was in force. The PROGRESSIVE English-Japanese dictionary issued on July 20, 1989, the READERS English-Japanese dictionary issued in May 1984, and the Royal French-Japanese dictionary issued on January 1, 1985 explained that "Champagne" was Champagne colors illustrating "green yellow color", "yellowish-brown

color" and "amber". Therefore, even in this respect, the above Court judgement was against the fact.

The explanations of these dictionaries showed that the word "Champagne" had been widely used as color indications in Japan before the TRIPS Agreement became in force and that it should not violate "public order and morals" (Article 4-1-7 of the Trademark Law) since "Champagne" colors were already common Japanese words.

We feel from these facts that the IP High Court already had the strong impression when this court action started that the subject trademark "envie CHAMPAGNE GRAY" was against Article 4-1-7 of the Trademark Law in order to comply with the TRIPS international agreement by protecting "CHAMPAGNE".

Although the trademark registration for "envie CHAMPAGNE GRAY" was invalidated by the IP High Court, it is not prohibited to use the word "Champagne" or "CHAMPAGNE GRAY" as a color indication as far as the trademark Law is concerned, where a discrepancy exists.