


Court Decisions

2024:
[April]

●HERMÈS Color Mark Case (IP High Court)

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| March 11, 2024 / R5 (Gyo-Ke) 10095 | |
| Parties | Plaintiff: Hermès International Defendant: Japan Patent Office |
| Mark | Applied for Color Mark  Classes 3,14,16,18 and 35 |
| Conclusion | Non-distinctive (Trademark Law 3-1-3, 3-1-6) |
| <p>Summary:</p> <p>In the eyes of purchasers and consumers interested in luxury fashion brands like Hermès, it is widely recognized that the packaging (orange box) bearing this applied for color mark is associated with the Hermès brand. However, the designated goods and services in this application encompass a wide range, including inexpensive daily items (leather creams, watches, keychains, stationery, diaries, backpacks, umbrellas, etc.), which are traded and consumed by a broad spectrum of consumers. Thus, even though the Hermès brand itself is widely recognized among the general public, specific trademarks like the famous 'HERMÈS' wordmark or the graphic trademark depicting "a carriage and person" could also serve as distinctive identifiers. Therefore, it cannot be immediately acknowledged that the applied for color mark itself is recognized as representing the Hermès brand.</p> <p>Regarding the survey, as all respondents were limited to ages 30-59 and primarily consisted of purchasers of luxury fashion brand items like Hermès or those interested in them, it cannot be considered as targeting the general consumer population broadly. Consequently, it is deemed inappropriate to accept this survey as evidence of the distinctive character of the applied for color mark in relation to its goods and services.</p> <p>Based on these points, the applied for color mark is determined to lack inherent distinctiveness and is not recognized to have acquired distinctiveness through use.</p> <p>Comment (supplementary explanation):</p> <p>The court did not entirely accept the arguments put forth by the Patent Office (defendant), but expressed its views on the evaluation of precedents concerning the color of</p> | |

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| | | <p>packaging and similar issues related to monopolistic adaptation. Specifically, the court acknowledged that there are some parties that seem to have ceased sales following warnings from the plaintiff, admitting to engaging in unfair competition. Therefore, the court suggests that the color and color scheme characteristics of the packaging in question (applied for color mark) imply a high customer attraction. Additionally, even if registration of the applied for color mark were to be approved, it is inferred that similar patterns of use could potentially constitute unfair competition. Hence, it cautions against overestimating the contracting effect of registering the applied for color mark. However, it is noted that the court did not allow the registration, as stated above.</p> |
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●ROYAL OAK Device Mark Case (IP High Court)

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| <p>March 28, 2024 / R5 (Gyo-Ke) 10119</p> | | |
| <p>Parties</p> | <p>Plaintiff: Audemars Piguet Holding SA Defendant: Japan Patent Office</p> | <p>Summary: Firstly, the shape of the applied for mark was objectively adopted for the purpose of contributing to the functionality or aesthetics of the product, and it is considered to lack distinctive character based on the premise that it is a shape chosen for its functional or aesthetic value for similar products among general consumers, who are the target audience. Secondly, it was observed that there are multiple products in the market, including wristwatches handled by entities other than the plaintiff, which bear shapes similar to the applied for mark. Additionally, it was noted that the product in question exhibits considerable variation in its shape, as well as being advertised alongside other variations. Furthermore, all advertisements introducing the product in question include the plaintiff's company name "AP" or similar designations. Based on these points, it is concluded that general consumers, as the target audience, do not distinguish the product in question based on its shape but rather identify it through the letters displayed on the dial</p> |
| <p>Mark</p> | <p>Applied for Device Mark</p> <div data-bbox="411 1294 598 1503" data-label="Image"> </div> <p>Class 14: Watches.</p> | |
| <p>Conclusion</p> | <p>Non-distinctive (Trademark Law 3-1-3)</p> | |

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| | | <p>or the descriptions provided in advertisements. Consequently, the acquisition of distinctiveness through use is not recognized either.</p> <p>Comment (supplementary explanation): This is an application for a 2-dimensional device trademark relating to the ROYAL OAK which is a representative model of the plaintiff's brand.</p> |
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