

IP Brief

Beijing

On July 22, 2013 statistics working group conference of IP5 opened in Beijing.

北京

7月22日,2013年五局统计工作组会议在北京开幕。

Shanghai

Sources from the recently-held 2013 Symposium of IPR Financing in New Pudong Area said by June this year, the area has secured a loan of 1.6 billion yuan by IPRs pledging.

上海

日前,从2013年浦东新区知识产权质押融资工作研讨会上传出信息,截至今年6月,浦东新区知识产权质押贷款规模已超过16亿元。

Sichuan

Since this year, the Industrial and Commercial administration sector of Sichuan Province has stepped up implementation of trademark strategies.

四川

今年以来,四川省工商系统大力实施商标战略,服务四川多点多极发展。

P&G failed in first-instance trademark dispute of “伊卡璐” 宝洁一审败诉“伊卡璐”之争

Recently, the Procter & Gamble Company filed a lawsuit against Guangdong Xuerou Fine Chemical Industry Co., Ltd. (Xuerou Company) for the registration of the trademark “伊卡璐”.

P&G’s claim for a well-known trademark

The No. 1176333 trademark in question “伊卡璐” was applied for registration in 1997 by Jia Liya Cosmetics Co., Ltd. in Chaoyang City, Guangdong Province and was approved in 1998, certified to be used on Class 5, the goods of air fresheners.

Meanwhile, the No. 886050 cited trademark “伊卡璐” was applied for registration by Guangdong Apollo Cosmetics Co., Ltd in 1994 and approved in 1996, certified to be used on Class 3, the goods of detergent, ect.

The case started from 2009, in which the Procter & Gamble Company made a trademark dispute ap-

plication to the Trademark Appeal Board under the State Administration for Industry and Commerce, argued that “伊卡璐”, was a distinct Chinese trademark it created based on the English trademark “CLAIROL”, and Xuerou Company’s registration of the trademark in the similar goods had constituted trademark infringement.

According to the Procter & Gamble Company, it had begun to sell products of skin care with the trademark “伊卡璐” in China in 1996, with the package of the products marked with both “Clairol” in English and “伊卡璐” in Chinese.

Insufficient evidence

In the trial, the Beijing Higher People’s Court found that though Procter & Gamble Company could prove that it had used the trademark “伊卡璐” from 1996 to 1998, the trademark was transferred to it in 2003.



ble Company failed to prove “伊卡璐” had constituted a well-known trademark before 2003.

As to the trial, the agent of the Procter & Gamble Company argued that the company’s use of the trademark before 2003 should be retroactive though the trademark “伊卡璐” was transferred to it by Guangdong Apollo Cosmetics Co., Ltd. in 2003.

(by Yang Liu)

本报记者 杨柳

因广东雪柔精细化工实业有限公司

公司(下称雪柔公司)在他类商品上注册了“伊卡璐”商标,宝洁公司将其诉上法庭,要求撤销争议商标“伊卡璐”的注册。

驰名商标之争

该案争议商标为第1176333号“伊卡璐”商标,由广东省潮阳市嘉丽雅化妆品有限公司于1997年申请注册,1998年获得商标专用权,核定使用在第5类空气清新剂等商品上。

而宝洁公司名下的第886050号“伊卡璐”商标(下称引证商标)原由广东太阳神化妆品有限公司于1994年提出注册申请,1996年获准注册,核定使用在第3类洗洁用品等商品上。

据宝洁公司介绍,该公司旗下的“伊卡璐”品牌系列洗护用品于1996年在中国上市,其产品包装上标有“CLAIROL”英文标识及其对应的“伊卡璐”汉字标识。

雪柔公司在类似商品上注册争议商标,已经构成侵权。

请注册的争议商标与宝洁公司的“伊卡璐”商标在字体设计上完全相同,宝洁公司认为雪柔公司此举属于恶意复制和抄袭。

证据尴尬

在该案二审过程中,法院经审查发现,宝洁公司提供的证据中大量突出其在1996年至1998年期间持续使用“伊卡璐”商标,但根据其商标信息表明,宝洁公司持有的“伊卡璐”商标是在2003年之后才从广东太阳神化妆品有限公司手中转让得来,而在2003年之前,宝洁公司并未获得引证商标的转让,也没有得到广东太阳神化妆品有限公司的授权使用,因此1996年至1998年期间宝洁公司对“伊卡璐”商标的使用本身即属于有瑕疵的商标使用行为。

对此宝洁公司方代理人表示,虽然“伊卡璐”是由广东太阳神化妆品有限公司在2003年才转让至宝洁公司名下的,但该转让对在此之前宝洁公司的使用行为应具有追溯力,对此意见法庭庭未予认可。

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(Intern, Li Han also contributed to the translation) (本报实习生李涛对本版翻译亦有贡献)

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