

**□ No disposition was made by FTC in case of Tequila Development Co., Ltd. was complained by copying the outward appearance of another's product. 【August 17, 2006】**

Societe Jas Hennessy & Co. (hereinafter called "SJH") filed a complaint against Tequila Development Co., Ltd. (hereinafter called "TDC") for selling Delpech Cognac XO, which involved an extreme degree of plagiarism by copying the outward appearance of another's product. During its 768th Commissioners' Meeting on August 17, 2006, the FTC determined that it was difficult to determine if there was a violation of the Fair Trade Law based on existing evidence.

The case started when SJH wrote to the FTC claiming that the company had launched three cognac brandies under the all-new Prestige Range series on April 17, 2001, among them being the Hennessy Paradise Extra (hereinafter called "Paradise cognac"). New design patent applications for the Paradise cognac bottle were filed in France and Taiwan on April 23, 2001 and Oct. 12, 2001, respectively. SJH purchased one 700-ounce bottle of imported Delpech Cognac XO (hereinafter called "Delpech") locally from TDC. When compared with the outward appearance of Paradise cognac, the features of the two bottles were obviously the same. SJH alleged that TDC engaged in extreme plagiarism of the outward appearance of the Paradise cognac and violated Article 24 of the Fair Trade Law.

Investigation showed that SJH applied for a new design patent for its Paradise cognac bottle in Taiwan on Oct. 12, 2001. The new design sample was referred to as "bottle" with patent no. 00565167. On Dec. 30, 2004, somebody reported and applied for revocation of the new design patent with the Intellectual Property Office under the MOEA. In the Intellectual Property Office's decision on patent revocation Chih Chuan San (1) 03019 Tzu no. 09520005500 dated Jan. 3, 2006, it was decided that the report was valid and that the new design patent should be revoked. SJH then filed an appeal against the aforementioned decision to revoke the patent. The case, currently under litigation in administrative proceedings, remains pending. Therefore, whether SJH owns the new design patent of the Paradise cognac bottle and whether there was infringement are issues within the scope of relevant intellectual property right laws, and they do not involve the Fair Trade Law.

In addition, the design of the protrusions on each side of the Delpech and Paradise cognac bottles are not entirely the same. The thicknesses of the bottoms are different, and so are the shapes of the bottle cap, colors, letters, and figures. Moreover, the printed words, font type, font size, and figures of the trademark and brandname in front of the bottles are obviously different. Therefore, on looking at the outward appearances of the two bottles, their effects would not mislead trading counterparts into believing that the two came from the same source, product series, or related enterprises. In addition, TDC had spared no efforts to differentiate its Delpech bottle from SJH's Paradise cognac bottle. Hence, it was difficult to determine that TDC had engaged in extreme plagiarism by copying with "completely identical" or "extreme likeness," thereby violating Article 24 of the Fair Trade Law.