

# China: Dior Win in Long-Running Battle Over 3D Trademark For J'ADORE Bottle

*Parfums Christian Dior v. China Trademark Review and Adjudication Board, Supreme People's Court 2018*

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On World Intellectual Property Day 2018, the Supreme People's Court (the "SPC") reheard the administrative dispute concerning the Chinese Trademark Office's (the "CTMO") refusal to register a three-dimensional ("3D") trademark for Dior's J'ADORE perfume bottle. After a multi-year dispute, the SPC ultimately overruled the decisions of the lower courts that had upheld the CTMO's refusal to register Dior's 3D bottle design as a trademark.



## 1. Background

In 2014, the luxury perfume house Parfums Christian Dior (“Dior”) extended its International Registration for the three-dimensional trademark covering perfumes and related goods in Class 3 to several jurisdictions, including China. The 3D trademark is used for Dior’s J’ADORE product, which was introduced to the Chinese market in 1999.

In 2015, the CTMO refused Dior’s application on the basis that the bottle design lacked distinctiveness, and Dior appealed the decision to the Trademark Review and Adjudication Board (the “TRAB”). In its 2016 decision upholding the CTMO’s refusal, the TRAB noted that the mark consisted of a common container and was therefore incapable of indicating the origin of the product. The TRAB further held that the evidence submitted by Dior was insufficient to demonstrate that the mark had acquired distinctiveness through use.

Dior further appealed the unfavorable TRAB decision on the grounds that the perfume bottle was indicated by WIPO to be a 3D trademark with specified characteristics including color (the description of the 3D mark that was granted by WIPO is “The mark is the form of fine and long ‘8’, for top with small a globe; the lower end is oval shape; of the circles. Long ornament gold” [sic]), rather than a two-dimensional trademark as it was treated by the CTMO during examination, and that the mark had been widely used and promoted in China. However, the Beijing courts of the first and second instance each rejected Dior’s arguments and held that the perfume bottle lacked the inherent distinctiveness necessary to be regarded as a 3D trademark.

## **2. Supreme People’s Court Decision**

The SPC held that the lower courts may have erred in refusing to register the 3D bottle shape and ordered another review of the application by the TRAB. The SPC noted that the TRAB failed to identify the mark as a 3D mark despite Dior’s efforts to rectify the error, and also reasoned that because Dior owned an earlier 3D national Chinese registration that issued in 2009 for the J’ADORE bottle in Class 3 (albeit covering more limited services), the TRAB should have applied the same examination standard during the review process and granted protection to the application at issue. With respect to the distinctiveness of the mark, the SPC ordered the TRAB to consider on reexamination the principle of consistency in the standards governing trademark examination as well as the distinctiveness of the mark generally, and its possible acquired distinctiveness through use in the marketplace.

The SPC decision is encouraging and suggests that China is willing to take broader steps to protect global IP rights. However, it is worth noting that the SPC did not provide specific guidance on whether the subject 3D mark met the evidentiary threshold to support a showing of acquired distinctiveness, so we are watching how the TRAB comes out on that issue on reexamination.

### **Primary Contacts**

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