

L'Occitane's 9 Million RMB Award for Trademark Infringement in China Affirmed on Appeal

Article By:

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On June 7, 2021, the [Zhejiang Higher People's Court](#) announced it has [affirmed an award of 9 Million RMB \(\\$1.4 Million USD\) and an injunction](#) to [L'Occitane](#) for trademark infringement and unfair competition. L'Occitane had earlier sued Zhejiang Junda Biotechnology Development Co., Ltd. (????????????????) and Guangzhou Ailian Cosmetics Co., Ltd. (????????????????) for the sale of Andorheal Fragrance Body Lotion in a bottle similar to L'Occitane's [Cherry Blossom Shimmered Lotion](#) as well as the use of L'Occitane's cherry blossom trademark.



L'Occitane on left, infringing product on right.

In 2019, L'Occitane noticed that a product named Andorheal Fragrance Body Lotion was being sold in Junda Company's online "Andorheal Flagship Store" operated on an e-commerce platform and was priced at 89.90 RMB per bottle. Further, often there was a promotional discount when purchasing 3 bottles. The manufacturer, Ailian Company, also opened stores on other e-commerce platforms, and the price was as low as 5.8 RMB per bottle. The product looks very similar to its L'Occitane Cherry Blossom Shimmered Lotion, mainly in the shape of the bottle, its cherry blossom motif and its design of the mouth. In addition, in 2016, L'Occitane registered the cherry blossom motif in China as Chinese trademark no. 17800581.



第17800581号樱花图形注册商标

At first instance, the Intermediate People's Court of Hangzhou City determined that Junda Company and Ailian Company committed trademark infringement and unfair competition, and ruled that the two companies should cease the infringement. Further, Junda Company should pay compensation of 3 million RMB and Ailian Company should pay compensation of 6 million RMB. The two companies refused to accept the judgment and appealed.

In the second instance, Ailian Company and Junda Company argued that the first instance judgment did not consider their actual costs and profitability and the amount of compensation in the judgment was too high. Further, Ailian claimed that it had changed the package of its products after the lawsuit was involved, so the act of manufacturing and selling the newly packaged products was not trademark infringement and unfair competition, and it hoped to reduce the amount of compensation.

The Zhejiang Higher People's Court held that, after comparison, the shape of the bottle, the size and quantity of the flowers as well as the patterns of the cherry blossoms remain similar to those of the relevant products of L'Occitane. The similar aspects include the size of the bottle, the materials, the patterns of flowers and the bottle caps, as well as the arrangement of all elements on the packages which are also basically identical, which may still cause confusion to consumers. Ailian Company's production and sales of the newly packaged products also constituted trademark infringement and unfair competition.

Regarding the issue of the amount of compensation, the Zhejiang Higher People's Court held that although Junda Company and Ailian Company claimed that the sales amount should be reduced because a sales counter on the product webpage was falsely inflated to show higher sales, there was no evidence to support it. Junda Company and Ailian Company knew that the L'Occitane Cherry Blossom series of products were well-known, but maliciously abused L'Occitane's goodwill. They

not only fully imitated the trademark on the packaging of the products, but the product descriptions on the infringing product sales webpages were similar to the L'Occitane products and there was even a statement that "the data originates from L'Occitane." Further, after the lawsuit was filed, the infringement did not stop – the subjective and malicious infringement is obvious, and the harmful consequences have been further expanded.

Accordingly, the Zhejiang Higher People's Court held that the court of first instance's determination that Junda Company should bear 3 million RMB in compensation and Ailian Company should bear 6 million RMB in compensation is not improper and is affirmed.

The Judge commented:

This case is a typical case of counterfeiting commercial logos. The products produced by the defendant fully imitated the trademarks, packaging and decoration of L'Occitane's earlier use of the well-known L'Occitane cherry blossom products. The malicious appropriation of L'Occitane's goodwill is very obvious. Therefore, the court found that trademark infringement and unfair competition were established and ordered a total of 9 million RMB in compensation. Although the defendant changed the logo and packaging and decoration after the lawsuit, the changes were subtle and still similar to L'Occitane's trademark, packaging and decoration. It should be determined that it did not stop the infringement.

In determining the sales volume of e-commerce platform operators, the defendant often proposes that the actual sales volume is much lower than the sales volume displayed on the page due to the existence of acts such as falsely inflating sales, but the false inflation itself is an act of unfair competition, and the sales volume is exaggerated and affects consumer choice. In this case, the defendant did not submit evidence to prove that it had inflated sales. Even if it can be proved, it still has to bear the corresponding compensation liability for the inflated sales volume. Therefore, in the process of market operation, operators should be honest and law-abiding, increase their awareness of intellectual property protection, and continue to gain competitive advantage through innovation and on the basis of respecting the intellectual property rights of others.

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