

THE TRADEMARK BUREAU AT WORK

Allegations of Inefficiency Already Being Made: Complaints Both by Chinese and Japanese Firms: Instructive Notes from the Chinese Press

Herewith we reproduce a summary of various articles dealing with the Trademark Registration Bureau which have appeared in the Chinese newspapers. They speak for themselves, and a perusal of their contents must serve to emphasize the danger which foreign firms will run should they have to submit to the new Chinese law. A summary of articles published in the "Shanghai Journal of Commerce" and the "Shun Pao" on March 25, calls first for attention. It is to the following effect:—

S. Suzuki & Co., Ltd., a Japanese firm, claim that they were granted patent rights in Japan (about 1910), and also in Great Britain, United States of America, and France, over a certain kind of food (powder sauce) called "Vi-Tsing," and that the Japanese Consul has certified that the trademark "Vi-Tsing" has been in use in China for over 10 years. Suzuki & Co. also claim that the trademark "Vi-Tsing" was first put on the market by a Chinese firm—the Tienchu Manufacturing Co.—last summer.

In September the Tienchu Manufacturing Company applied to the Trademark Bureau to register its trademark "Fu-Shou." The mark consists of a device and on it appear the words "Vi-Tsing" in Chinese and English. The mark was examined by the Bureau and passed, and was published in the Trade Mark Gazette dated November 15, 1923.

Some time in November Suzuki & Co. gave 24 names to their sauce powder, including the name "Vi-Tsing" and applied to the Bureau for registration of these names as trademarks. These so-called Marks—23 of which consist simply and solely of Chinese characters (varying from 2 to 5), were examined and passed by the Bureau and published in the Gazette dated February 15, 1924.

AN EARLY PROTEST.

In December Suzuki & Co. lodged a protest with the Bureau against the use of the term "Vi-Tsing" by the Tienchu Manufacturing Co. on the ground that the registration was a breach of Article 2 (5) and Article 3 of the Trade Mark Law:—

Art. 2.—Any of the following cannot be registered as a trade mark.

(5) Devices which are identical with or similar to a mark belonging to another person and generally known to the public as being used for identical goods.

Art. 3.—When two or more persons apply separately to obtain registration for an identical or similar trade mark which is to be used for identical goods, only that person who actually first used such trade mark shall be granted registration; but registration shall be granted to a person who shall first make application, provided that no one of the applicants has used such trade mark before or provided that a former user cannot be established. If the applications are of the same date, the mutual agreement of the applicants shall govern; if they do not agree, none of such trade marks shall be registered.

According to the "Shanghai Journal of Commerce" dated March 21, 1924, the Tienchu Manufacturing Co. have now protested to the Bureau claiming that "Vi-Tsing" was a special product of that company, that their trademark "Fu-Shou" (in which the name "Vi-Tsing" was incorporated) had been passed by the Bureau and published in the Trademark Gazette for November 15, 1923, and that they had applied for its registration before Suzuki & Co.

ALLEGED VIOLATIONS.

It is amusing to see, however, an Article on the same question which appeared in the "Shun Pao" on March 20, 1924. That paper quotes a letter sent by the Shanghai General Chamber of Commerce (apparently on behalf of the Tienchu Manufacturing Co.) to the Trademark Bureau in which they state in effect:

That the trademark of the Tienchu Manufacturing Co. was "Fu-Shou" and not "Vi-Tsing," which being the name of a kind of food or commodity did not fall under

the category of a trademark; that "Vi-Tsing" should not be registered as a trademark any more than the words "tooth powder" could be. They ask the Bureau:

(a) If the characters "Vi-Tsing" are to be registered as the name of a commodity, why did the Bureau violate Art. 15 of the Trade Mark Law (which provides that the effects of a trademark right do not extend to . . . the name . . . quality or nature of the goods) by permitting Suzuki & Co. to register them as a trade mark.

(b) If the Bureau regard the characters "Vi-Tsing" as a trade mark why did it permit Suzuki & Co. to register them when they had already been examined and passed as the trademark of Tienchu Manufacturing Co.

YET FURTHER COMPLICATIONS.

But the comedy goes further when we read in the "Shun Pao" of March 25, 1924, what purports to be a letter addressed to the Shanghai General Chamber of Commerce by the China Chemical Works (a Chinese firm).

To put it shortly, the China Chemical Works complain that on November 17, 1923, they applied to the Bureau for the registration of a Mark which consisted of the Chinese characters "Mei Vi Shu" in connexion with sauce powder. That they received a reply from the Bureau on November 22 refusing registration on the ground that the proposed Mark was "in plain characters and did not have a specially distinctive appearance, and as it was merely the name of a commodity it might be used by all who sold the same kind of goods. The Bureau advised them to change their mark. This the company did, and re-submitted the mark for registration on December 1.

On March 8, the China Chemical Company received a reply from the Bureau stating that the mark could not be registered because it was identical with a mark of Suzuki & Co. which had been examined and passed, and had been published in the Trade Mark Gazette for February.

The China Chemical Co. ask "how the Bureau interpret Art. 3 of the Trademark Law (above quoted) by approving an 'identical trade mark used on identical goods of those people who first made the application.'"

It should be noted that Suzuki & Co.'s Mark, as advertised in the Gazette, consists of three plain characters, and is one of the 24 marks complained of by the Tienchu Manufacturing Co. before mentioned.

CHINESE COMPANY'S PROTEST.

In connexion with this case it is next of interest to read the protest of the Tienchu Manufacturing Co. with the Bureau of Trademarks which was published in the "Shanghai Journal of Commerce" on March 21. It reads as follows:—

The Vi-tsing of the Tienchu Manufacturing Company in port has won the favour of society since its appearance in the market. Last autumn, the above company applied to the Trademark Bureau for the registration of the exclusive right of using its Fu-shou trademark. The mark has passed an examination made by the Bureau. In spring of this year, the S. Suzuki & Co. Ltd., a Japanese firm, applied to the Bureau for the registration of the term Vi-tsing and over 20 others as the associated trademarks of kind of food known as Ajimonoto. Without looking into the matter carefully, the Bureau passed all the terms as trademarks. Taking the Trademark Law as basis, the Tienchu Manufacturing Co. has lodged a protest, containing the following words, with the Bureau:—

"In order to show that our product was manufactured by ourselves, we submitted to you, in September last year, a picture of our trademark and the name of our product referred to

as No. 44 class of goods under Article 36 of the detailed Regulations on the Trademark Law, and applied to you for its registration. In November, last year, we received from your Bureau an order (No. 168) granting our application and a 'paper of decision (No. 117).' The Bureau has also published our trademark and the name of our product in the Trademark Gazette, dated November 15, 1923. We were surprised to find in the Trademark Journal, dated February 15, 1924, that among the trademarks that had passed the examination of the Bureau, Vi-tsing was one which was used by S. Saito, an agent of a Japanese firm named S. Suzuki & Co. Ltd., as the trademark of an article similar to our Vi-tsing. Vi-tsing is the name we use for a special product of this company. If the same two characters are used by that Japanese merchant as the trademark of the same kind of food, how can consumers distinguish one from the other? What that merchant has done is not only detrimental to our trade rights but also an act of swindling. To use fraudulently the name of a special product of other people as a trademark of a similar kind of commodity, will seriously affect the interests of the people concerned, so we cannot help protesting against it. We submit you this petition and request you to protect our rights and stop swindling by abolishing the Vi-tsing trademark of that Japanese Company."

THE JAPANESE PLEA.

Under the heading "Suzuki's agent protests against the use of the term Vi-tsing by the Tienchu Manufacturing Co." the "Shun Pao" of March 25 gives further details of the matter. A rough translation is to the following effect:—

On the following grounds, S. Saito, an agent of S. Suzuki & Co. Ltd., has lodged a protest with the Bureau of Trademarks, against the using of the term Vi-tsing by the Tienchu Manufacturing Co.

"S. Suzuki & Co. Ltd., were granted the patent right on Ajimonoto, Chomiseifun, and Vi-tsing (names of goods—Translator's note) by the Japanese Government in the 41st year of Meiji (about 1910). The same right has also been given to the company by Great Britain, the United States, and France. The trademarks of the above three goods have been used in China over 10 years. The Japanese Consul-General has issued a certificate to the above effect.

"The trademarks of the above goods have been used for years, in China, and are well-known to the public, so in accordance with Clause 5 of Article 2 of the Trademark Law, no one shall be allowed to use any mark identical with or similar to any of the marks of the above company.

"Article 3 of the Trademark Law provides that when two or more persons apply separately to obtain registration for an identical or similar trademark which is to be used for identical goods, only that person who actually first used such trademark shall be granted registration. Wang Tung-yuan (proprietor of the Tienchu Manufacturing Co.) did not begin to use the trademark Vi-tsing (the Japanese merchant regards Vi-tsing as a trademark of Tienchu Manufacturing Co.—Translator's note) until last summer. So S. Suzuki & Co. Ltd., used that mark first.

"Taking advantage of the provision of Article 15 of the Trademark Law, Wang Tung-yuan has used Vi-tsing, the name of one of the products of S. Suzuki & Co. Ltd., as a trademark. But he should not have done it, because Vi-tsing is not only the name of that product but also its trademark."

(The above protest was lodged before the Tienchu Manufacturing Co. did, when the Japanese merchant found that the term Vi-tsing had appeared in the Trademark Gazette, dated November 15, 1923. He did not send the samples of his trademarks to the Bureau for registration until November 17, 1923.—Translator's note).

IS IT A TRADEMARK?

Next in order comes the protest of the China Chemical Works against the action of the Trademark Bureau with reference to the trademarks of Suzuki & Co. This is contained in a letter addressed to the Chinese General Chamber of Commerce which is published in the "Shun Pao" of March 25. A rough translation is as follows:—

"General Chamber of Commerce, Shanghai.

"All people in business and industrial circles appreciate your kindness in making efforts to protect their rights by sending the letter that appeared in yesterday's newspapers, to the Bureau of Trademarks. We have also been affected by the action of S. Suzuki & Co. On November 17, last year, we took all procedure necessary and sent five copies of samples and a cut of our Mei Vi Shu trademark to the Bureau for registration. On the 22nd of that month, we received an order from the Bureau, which quoted Articles 1 and 15 of the Trademark Law and said that the mark could not be registered because it was in plain characters and did not have a specially distinctive appearance and, as it was merely the name of a commodity, it might be used by all who sold the same kinds of goods. The Bureau advised us to have our mark changed. So we changed the picture of our Mei Vi Shu trademark and sent it to the Bureau on December 1 for registration. On March 8 of this year, we received an order from the Bureau, saying that our mark could not be registered because it was identical with one of the marks of S. Suzuki & Co., which had been examined, found agreeing with the Law, and published in the No. 6 Trademark Gazette, and advising us to change it again.

INCONSISTENCY.

"The Bureau has been inconsistent with itself. It would not let

us register our Mei Vi Shu trademark because the mark was in plain characters, had no specially distinctive appearance, and was the name of a common article. But the Mei Vi Shu Trademark of S. Suzuki & Co., which is also in plain characters and a name of a common article, has passed its examination.

"Article 3 of the Trademark Law provides,

'When two or more persons apply separately to obtain registration for an identical or similar trade mark which is to be used for identical goods, only that person who actually first used such trade mark shall be granted registration; but registration shall be granted to a person who shall first make application, provided that no one of the applicant's has used such trademark before or provided that a former user cannot be established.'

The first order, which we received from the Bureau, said only that in accordance with the Trademark Law the characters Mei Vi Shu could not be registered as a trademark. It did not say that S. Suzuki & Co. had applied for the registration of the same trademark. That is an evidence that we applied earlier than S. Suzuki & Co. did, for the registration of the Mei Vi Shu Trademark. How did the Bureau interpret Article 3 of the Trademark Law by approving an identical trademark used on identical goods of those people who were not the first who made the application? With regard to Articles 1 and 15 of the Trademark Law, what explanation would the Bureau make in passing the Mei Vi Shu trademark of S. Suzuki & Co., which is in plain characters, has no specially distinctive appearance either, and is also a common name of a commodity? The above action of the Trademark Bureau has violated the Trademark Law and will seriously affect the registration of trademarks, so we request you to send a special letter to the Bureau, asking it to explain its actions in accordance with the Law."