

2016 年 4 月

知识产权

## 引证商标所有人出具的同意函对商标授权确权的影响

## THE IMPACT OF LETTER OF CONSENT ISSUED BY OWNER OF CITED TRADEMARK ON THE GRANTING OF TRADEMARK.

在目前的商标申请实务中，申请商标因与引证商标存在相似而被驳回的情况时有发生。在这种情况下，商标申请人出于自身利益的考虑，往往会采取以下方式予以救济：

In current trademark application practice, many trademark applications are rejected due to the similarity with the cited trademark. When rejection happens, to safeguard its interest, trademark applicant usually will take remedy measure as follows:

- 以申请商标与引证商标存在显著区别，不会引起公众混淆为由向商标评审委员会提起复审；  
Filing appeal to Trademark Review and Adjudication Board (the Board) arguing the existence of significant differences between the trademark for application and the cited trademark, which will not cause public confusion.
- 对引证商标提出异议或者无效宣告请求。  
Filing opposition or invalidation application against the cited trademark.

除上述救济方式以外，近来亦出现了商标申请人在提请复审的时候，提交以引证商标所有人名义出具的许可商标申请人注册的同意函，或者由商标申请人和引证商标所有人签署的共存协议。对于此类同意函或共存协议对商标复审程序的影响，商标评审委员会和法院存在不同的看法。

In addition to the above remedies, some of trademark applicants may consider submitting a letter of consent issued in the name of the owner of the cited trademark, which allows the registration of the trademark by the applicant, or a co-existence agreement concluded by the applicant and the owner of the cited trademark. However, with regard to the legal effect of such letter of consent or co-existence agreement, the Board and the court give different opinion.

在申请商标为第 7522204 号“STELUX”商标申请中，申请人为宝光实业（集团）有限公司（下称“宝光公司”），指定使用商品为第 14 类贵重金属盒、手表、宝石等。

In a trademark application involving trademark STELUX (trademark No.7522204), the applicant is STELUX Holdings(Group) Limited (“STELUX Group”), the designated commodities for this trademark include boxes of precious metal, watches, jewels, etc in class 14.

商标局经审查，初步审定在“贵重金属盒”上使用申请商标的注册申请，驳回在手表等复审商品上使用申请商标的注册申请，理由为申请商标与引证商标近似。

After examination, the Trademark Office granted the trademark on boxes of precious metal while rejected the registration request on other commodities such as watches, etc. The given reason is the trademark for application is similar with the cited trademark.

引证商标为第 G984611 号“STELLUX”商标。核定使用商品为第 14 类的手表、表玻璃、宝石等。申请商标与引证商标仅差一个字母 L。

The cited trademark is STELLUX (trademark No.G984611). The designated commodities for the cited trademark include watches, watch glasses, jewels, etc, in class 14. The trademark for application and the cited trademark only differ by a letter L.

在此之后，商标申请人以申请商标为其商号，经长期使用具有较高知名度等理由提出复审，并同时引对引证商标提出异议，但是，商标评审委员会的复审以及之后所提起的行政诉讼一审中，商标申请人的复审和诉讼请求均为获得支持。

After that, the trademark applicant filed appeal to the Board claiming that the trademark for application had been used as its trade name and after long time using, the trademark for application has enjoyed the market recognition. Meanwhile, the trademark applicant raised opposition against the cited trademark. However, the result of the appeal and the first instance administrative lawsuit were not in favor of the trademark applicant.

该案件进入到一审诉讼后，商标申请人提交了一份经公证认证的引证商标所有人出具的同意函和商标申请人和引证商标所有人签署的共存协议，引证商标所有人同意且不反对商标申请人中国使用和注册申请商标，商品包括了钟、表、手表、钟表机件、表玻璃等。

It is worth mentioning that after the first instance of lawsuit was brought, the trademark applicant submitted to the court a letter of consent issued by the owner of the cited trademark, as well as a co-existence agreement concluded by the applicant and the owner of the cited trademark, which were notarized and legalized. According to the letter of consent, the owner of the cited trademark agreed that the applicant can register and use the trademark filed and the commodities allowed for the trademark include clocks, watches, wrist watches, the works of a clock or watch, watch glasses etc.

北京市高级人民法院受理二审诉讼后，认为该等引证商标所有人出具的同意函和双方签署的共存协议系在先商标权人对其权利的处分，且该等处分不存在明显的侵害消费者利益。因此应当予以采信。

After this case entered into the second instance in Beijing High People's Court, the Court is of the opinion that the letter of consent and the co-existence agreement shall be deemed as the disposition of the right by the prior trademark owner. The disposition does not obviously harm the interest of the public, which shall be accepted by the Court.

就此，北京市高级人民法院做出了撤销一审判决并责令商标评审委员会重新做出决定。

On that basis, Beijing High People's Court finally cancelled the decision made by the first instance court and requested the Board to make a new decision.

目前，该商标已进入到初审公告阶段。

At present, the trademark file by the applicant has been preliminary examined and put on publication to the public.

由此，我们可以得出结论，引证商标所有人出具的同意函将对商标申请人的商标授权确权产生实质性影响。

Therefore, we conclude that the letter of consent issued by the owner of the cited trademark shall have substantial influence to the grant of the trademark filed by the applicant.

**如您对本文有任何问题，请联系：**

**If you have any questions about this article, please contact us via:**



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