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INTRODUCTION TO THE FRENCH SYSTEM 法国制度介绍
LA COUR DE CASSATION 最高法院

Nathalie Sabotier | France | May 23rd 2022
Nathalie Sabotier | 法国 | 2022年5月23日

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I – The Role of the Cour de cassation in the French system 最高上诉法院在法国司法体系中的作用



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The Cour de cassation is the highest Court in the French judiciary system : 最高上诉法院是法国司法体系中的最高法院:

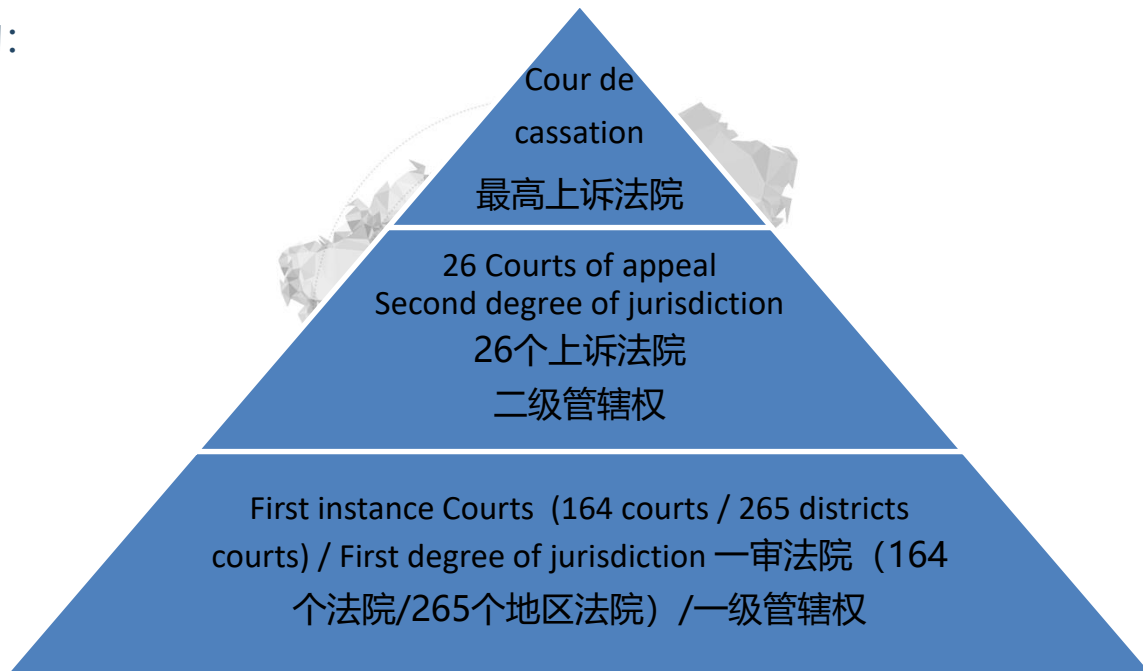
Article L.411-1 of the Judiciary Organization Code : « *Il y a pour toute la République une Cour de cassation* » (There is for the all Republic one Cour de cassation)

《司法组织法典》第L.441-1条：法兰西共和国只有一个最高上诉法院



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Hierarchy 层级结构:



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General points 背景信息：

The Court is located in Paris and is composed of 200 judges (and 50 prosecutors) 最高上诉法院位于巴黎，共有200位法官（和50位检察官）。

The Court is divided into six specialized Chambers : The First Civil Chamber (civil law), The Second Civil Chamber (procedure), The Third Civil Chamber (property law), The Commercial Chamber, The Social Chamber (labor law), and the Criminal Chamber.

法院分为六个专门法庭：民事一庭（民法）、民事二庭（程序）、民事三庭（财产法）、商事法庭、社会法庭（劳动法）和刑事法庭。

Intellectual property cases are divided between the First Civil Chambre (copyrights) and the Commercial Chamber (industrial property: patents, trademarks, design, and unfair competition).

知识产权案件分属民事一庭（著作权）和商事法庭（工业产权：专利、商标、外观设计和不正当竞争）管辖。



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The Court is in charge of 法院负责:

- Monitoring the application of the law by lower courts 监督下级法院对法律的适用
- Giving a uniform interpretation of the law 对法条进行统一解释



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II – The procedure before the Court 法院程序



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Procedure (2) 法院程序 (2)



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THE REPORT OF THE JUDGE RAPPORTEUR 汇报法官的报告

I / Summary of facts
and of the procedure
相关事实和程序的摘要

II / Analysis of the plea
and 申诉分析

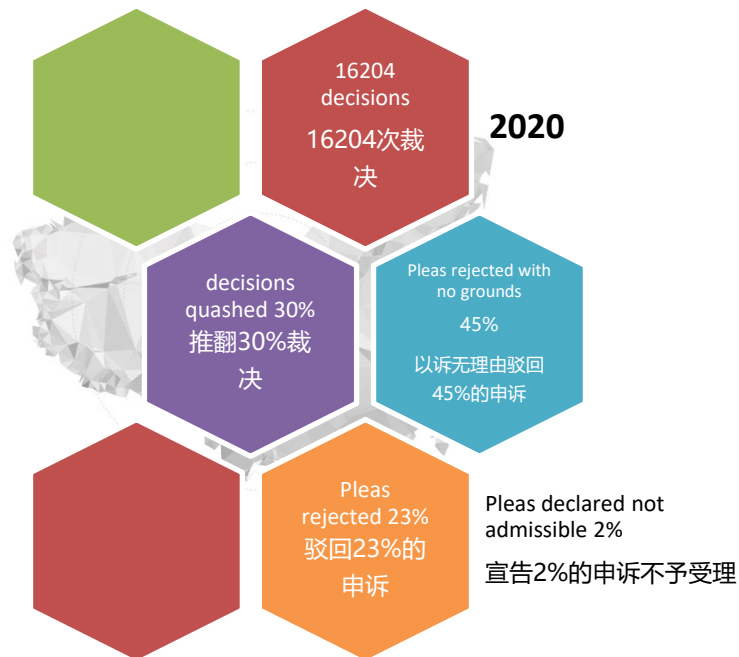
III / synthesis of applicable law 法律适用性归纳

IV / Orientation 裁决:

- 1- the plea is not admissible 申诉不予受理
- 2- the plea shall be rejected with no grounds 以诉无理由驳回申诉
- 3- the plea shall be examined before 3 judges (one project) 由3位法官对申诉进行审查 (专案)
- 4- the plea shall be examined before all the judges of the Chamber (One or more project) 由法庭全体法官对申诉进行审查 (专案或多案)



SUPERVISION (a few statistics) 监督 (统计数据)



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III – How does it work ? A recent IP Case 运行机制 (以近期某知识产权案件为例)

A – Background 背景

The Cour de cassation is not, technically, a third degree of jurisdiction, as far as the Court does not monitor facts, This means that facts are taken for granted, except the case of distortion of facts 准确说来，最高上诉法院并不具备第三级管辖权。因为最高院不审查事实，即默认接受事实（事实被扭曲的情形除外）

Decisions of lower courts are criticized by Pleas, that may include different « Means », directed against, both one or several point(s) of the operative part of a decision, and the grounds connected to this or these point(s) of the operative part 当事人通过申诉，对下级法院的裁决提出质疑；申诉可以包括不同诉点，针对裁决主体部分的一项或多项论点及其相关依据

A « Mean » shall be based on 诉点应当基于：

- A violation of law 违反法律
- -A lack of grounds 缺乏依据

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B- Violation of the law (Cass. Com., 4 novembre 2020, pourvoi n° 16-28.281, Bull. 2001, IV, n°?)

违反法律 (2020年11月4日商事法庭16-28.281号案件)

“The revocation of a trade mark, ordered pursuant to Article L. 714-5 of the Intellectual Property Code only takes effect upon the expiry of an uninterrupted period of five years without genuine use, the proprietor of a trademark is entitled to rely on infringements of the exclusive rights conferred by the trade mark which occurred before the revocation.

依据《知识产权法典》第L.714-5条，商标连续五年不实际使用的，予以撤销。在撤销前，商标权人享有商标专用权不受侵犯的权利。

In dismissing the claims brought by Mr B... the ruling holds that he does not justify any use of the trade mark since its registration and infers that, since the trade mark has not been brought into contact with the consumer, its proprietor cannot successfully argue that the trade mark's function as a guarantee of origin had been adversely affected, or that the monopoly on use conferred by his mark had been adversely affected, or indeed that its investment function had been adversely affected

上诉法院的裁决驳回了B先生提出的主张，认为B先生不能证明在注册后使用过商标，并推断鉴于该商标尚未与消费者发生接触，商标权人无法论证该商标作为商品来源保证的功能受到了不利影响，或商标授予的专用权受到了不利影响，亦或商标的投资属性受到了不利影响。

In so ruling, the Court of Appeal violated the above-mentioned texts.”

上诉法院的裁决违反了上文 (第一段) 法律规定。



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C – Distortion of facts 歪曲事实

“In view of the obligation of the court not to distort the documents submitted to it, 鉴于法院负有不得歪曲向其提交的文件的义务……”

In dismissing the claims brought by Mr B..., the ruling further hold that the evidence presented by him as proof that the elderberry liqueur bearing the mark “St-Germain” was marketed by the companies sued during the period in question are, with one exception, dated after 13 May 2011, date on which his effective rights in the trade mark “Saint Germain” were revoked, and thereby infers that the reality of the alleged infringement had not been demonstrated. 15. In so ruling, when Mr B... produced several accounting documents, dated from between May 2009 to May 2011, bearing the words “St-Germain” and relating to the sale of bottles of alcohol under that name.

上诉法院裁决驳回B先生的主张时，还认为B先生提供的证据（用于证明被诉企业在涉争期间出售了载有“St-Germain”商标的接骨木花利口酒），除一处例外，其他均仅涉及被诉企业在2011年5月13日之后发生的销售。由于B先生的“Saint Germain”【译注：圣哲曼】注册商标已于2011年5月13日撤销，裁决因此推断，被控侵权行为无法得到证实。然而，B先生……出具了2009年5月至2011年5月期间标有“St-Germain”字样、涉及同名利口酒销售记录的会计文件。

The Court of Appeal misrepresented those documents and infringed the aforementioned obligation.”

因此，上诉法院对前述文件表述不当，违反了上文（第一段）义务。



SUPERVISION (the plea is rejected with no grounds) 监督 (以诉无理由驳回申诉)

Ruling no 366 of 14 April 2021 (17-25.822) - Cour de cassation (Court of Cassation) - Commercial Chamber –

法国最高上诉法院商事法庭2021年4月14日366号裁决 (17-25.822)

Considering the third, sixth, seventh, and eighth parts of the first plea, appended hereafter
考虑到本裁决后附的第一次申诉第3、6、7、8部分

8. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on this plea which is clearly not of a nature to lead to quashing.

8. 依据《民事诉讼法》第1014条第2款，由于此申诉显然不符合推翻原判的要求，因此无需依据特殊理由作出裁决。



SUPERVISION (the plea is rejected with grounds given by the Cout) 监督 (依原判理由驳回申诉)

9. The Syndicat criticises the ruling for dismissing its requests, whereas :
9. 莫比尔奶酪联合会 (下称“联合会”) 不认可驳回其请求的裁决, 依据为:

"1°/ the decree of 22 December 2000 on the "Morbier" protected designation of origin only recognised the right for undertakings not located in the designated geographical area to "continue to use this name under current conditions" ; The Syndicat submits that the cour d'appel (Court of Appeal) noted that in October 2001, Fromagère du Livradois had filed an application in the United States, for a new trademark including the name "Morbier" and used it after the publication of the decree, and that, as a result, far from continuing to use the "Morbier" name "under current conditions", Fromagère du Livradois had sought to develop its use of the name "Morbier" starting in 2001. Therefore, the Syndicat claims that in ruling that Fromagère du Livradois did not commit any fault by filing an application for the trademark in 2001 and by operating the brand afterwards. In so ruling, the cour d'appel (Court of Appeal) infringed Article 8 of the decree of 22 December 2000 on the "Morbier" protected designation of origin, which at that time was applicable ;

"1°/ 2000年12月22日关于“Morbier”原产地名称保护的裁定仅授权不位于指定区域的企业“在当前条件下继续使用该名称”。联合会认为: 上诉法院指出, Livradois公司于2001年10月在美国提交了包含“Morbier”(莫比尔)标识的商标注册申请, 并在前述裁定宣布之后对该商标进行使用。因此, Livradois公司绝非仅仅“在当前条件下继续”对“Morbier”标识进行使用, 而是自2001年开始, 扩大范围对“Morbier”标识进行使用。因此, 联合会主张, 上诉法院认定Livradois公司在2001年提交商标申请以及之后运营该品牌的行为不构成过错的裁决, 违反了2000年12月22日关于“Morbier”原产地名称保护的裁定(当时该裁定仍具有适用性)。



SUPERVISION (the plea is rejected with grounds) 监督 (依原判理由驳回上诉)

2°/ the designation of origin is protected from any use by a competing symbol, whether this competing symbol is operated or not. The syndicat submits that by ruling that filing a new application for the trademark "Morbier du Haut Livradois" in 2008 and maintaining it up to the cancelling of its registration in 2013 did not constitute misconduct, once Fromagère du Livradois stated that it was no longer operating that trademark starting in 2007, the cour d'appel (Court of Appeal) infringed Article 13 of Regulation (EC) No 510/2006 of the Council of 20 March 2006, and Article 13 of the Regulation (EU) No 1152/2012 of the European Parliament and of the Council of 21 November 2012. ”

2°/ 原产地名称的竞争性标识不得使用（无论是否实际经营使用）。Livradois公司声称自2007年开始便不再经营使用“Morbier du Haut Livradois”商标，上诉法院据此认定其2008年注册商标、期间保有商标、直至2013年撤销商标不构成不当行为。联合会认为，上诉法院违反了2006年3月20日欧共同体第510/2006号条例第13条规定、2012年11月31日欧盟第1152/2012号条例第13条规定。”



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Court's response 法院意见

10. On the one hand, the Court of Appeal, having ruled that the acts posterior to 22 August 2008 were not time-barred, so that the action for damages due to the violations committed by Fromagère du Livradois by filling an application in the United States, in October 2001, for the trademark "Morbier du Haut-Livradois" and by operating it until 2007, was time-barred, the plea is without effect.

10. 另一方面，上诉法院认定，2008年8月22日之后的行为未过赔偿诉讼时效，而Livradois公司于2001年10月在美国提交“Morbier du Haut-Livradois”商标申请并经营使用至2007年的侵权活动，由于已经超出时效，原告申诉无效。

11. On the other hand, Article 13 of Regulation (EC) N° 510/2006 then Article 13 of Regulation (EU) N° 1152/2012 giving protection to protected designation of origin (appellation d'origine contrôlée, AOC) only in Member States, the plea alleging an infringement of the "Morbier" protected designation of origin (appellation d'origine protégée, AOP) committed outside of the European Union territory by simple renewal of the registration of a trademark in the United States, without a risk of evocation in the mind of European consumers, is without effect.

11. 另一方面，2006年3月20日欧共体第510/2006号条例第13条规定、2012年11月31日欧盟第1152/2012号条例第13条规定仅在欧盟成员国境内提供原产地名称保护。原告所控对“Morbier”原产地名称的侵犯行为发生在欧盟境外，而且仅涉及在美国对注册商标进行续展，不构成致使欧洲消费者产生联想的风险，因而原告申诉无效。

12. Consequently, the plea is not founded 因此，原告申诉不成立。





Presentation 演示文件	
Status 状态	DRAFT / APPROVED 草稿/已批准
Approved by owner 经负责人批准	-
Authors 作者	-
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THANK YOU VERY MUCH FOR YOUR ATTENTION
感谢聆听

