

Date	November 29, 2017	Court	Intellectual Property High Court, First Division
Case number	2017 (Gyo-Ke) 10071		
– A case in which the court recognized an error in the JPO decision that found that the holder of a trademark right for the trademark "COVERDERM" did not use said trademark for cosmetics.			

References: Article 50, paragraph (1) of the Trademark Act

Registration numbers: No. 4164563

Summary of the Judgment

According to the facts stated below, it can be found that the plaintiff advertised products bearing the plaintiff's trademark "COVERDERM" (the "Trademark") and affixed the Trademark to the order form for the products and electronically provided the order form to Japanese consumers on the plaintiff's website (the "Website") as of November 23, 2011, which is within three years from the registration of a request for a trial (the "Evidence-Required Period"). On these grounds, it can be said that the Trademark was used in Japan during the Evidence-Required Period under Article 2, paragraph (3), item (viii) of the Trademark Act.

1. On November 23, 2011, the plaintiff posted, on the Website with the indication "Coverderm Product Order Form" at the top of the webpage, some statements such as "COVERDERM is a leading brand specializing in skincare cosmetics" with the Trademark and the title "カバードーム," which is a katakana version of "COVERDERM." Below these statements, the plaintiff posted the statement "Please place an order by filling out the following sections with necessary information" and provided blank sections to input the given name, family name, address, product name, product volume, email address, and comments, and created a "Send" button below those sections so that customers can place orders via the Internet for the plaintiff's products. Below that, the plaintiff posted the statement "For further information about our company's products, please click here" and provided a link to the webpage providing detailed information about "COVERDERM" products.

At the end of the Website, there is the statement "Copyright© Farmeco S.A. Dermocosmetics – All rights reserved." to clarify that the plaintiff is the owner of the copyright for the Website.

2. The representative of the plaintiff owned the Japanese domain name "coverderm.jp" for the Website under his/her name from October 30, 2008, until, at least, the conclusion of the oral arguments and allowed the plaintiff to use the domain.

3. The Website was established in 2008 for the purpose of promoting the sales of the

plaintiff's COVERDERM products bearing the Trademark and directly receiving orders for those products from Japanese consumers. The online sales of the plaintiff can be found to be 7,863.49 euros in 2011, 8,129.44 euros in 2012, 7,555.50 euros in 2013, and 4,289.94 euros in the first half of 2014.