

Judgments of Intellectual Property High Court, Fourth Division

Date of the Judgment: 2005.6.30

Case number: 2005 (Gyo-ke) No.10336

Title (Case):

Judgment upon the case where the subject trademark “Ana Aslan” did not fall under Article 4, para.1, sub-para 7, sub-para 8, sub-para 10, sub-para 15, and sub-para 19 of the Trademark Law

Related Provisions:

Article 4, para.1, sub-para 7, sub-para 8, sub-para 10, sub-para 15, sub-para 19 of the Trademark Law

Summary of the Judgment:

The trademark of this case consists of the horizontally written Katakana script of “Ana Aslan” and the horizontally written romanized script of “Ana Aslan,” the two scripts aligned vertically in two lines, whose designated product is “...cosmetic” in the third category on an attached list to the Trademark Law implementation order. Ana Aslan is the name of a Romanian doctor who had invented pharmaceutical products for prevention and cure against aging.

The plaintiff appealed for the invalidation of judgment of the subject trademark, however the appeal examiner asserted that the subject trademark could not be invalidated by Article 46, para.1 since its registration was not subject to Article 4, para.1, sub-para 7, sub-para 8, sub-para 10, sub-para 15 and sub-para 19 of the Trademark Law.

This court dismissed the plaintiff’s allegation that the subject trademark fell under Article 4, para.1, sub-para 7, sub-para 8, sub-para 10, sub-para 15 and sub-para 19 of the Trademark Law.

(1) Pertaining to article 4, para.1, sub-para 10

It cannot be recognized that the trademark, quoted herein ” Gerovital H3. Prof. Dr. Ana Aslan” was widely known among business dealers or consumers in Japan at the time of filing of the application and grant.

(2) Article 4, para.1, sub-para 15

It is difficult to recognize that even if the subject trademark was used with its designated product, it would not be likely to cause confusion with the products Dr. Ana Aslan had invented or any other products related to her products.

(3) Pertaining to article 4, para.1, sub-para 7

It could not be acknowledged that the application procedure of the subject trademark was egregious to social morals and that granting the registration was against the order

expected by the Trademark Law. There was not sufficient evidence to prove that the subject trademark was offensive to public order or good morals.

(4) Pertaining to article 4, para.1, sub-para 8

The subject trademark cannot fall under the category of such trademark as includes “other peoples’ names” as ascribed in Article 4, para.1, sub-para 8 because Dr. Ana Aslan had passed away before filing the application of the subject trademark.

(5) Pertaining to article 4, para.1, sub-para 19

Based on the items (1) (2) (3) above, it cannot be acknowledged that the defendant had a fraudulent purpose for using the subject trademark.

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