

Trademark Right	Date	November 4, 2021	Court	Intellectual Property High Court, Second Division
	Case number	2021 (Gyo-Ke) 10061		

- A case in which, with regard to the registered trademark held by the Defendant, a request for a trial for partial rescission of the trademark registration was filed for cosmetics excluding cosmetics manufactured by a specific manufacturing method, and another request for a trial for partial rescission of the trademark registration was filed for cosmetics manufactured by using that manufacturing method; a lawsuit was then filed to seek rescission of the decision rendered by the JPO to the effect that the former request for a trial was groundless, and in this lawsuit, when it was found that the Defendant used the registered trademark for cosmetics, by taking into consideration facts such as that the JPO rendered a decision to partially rescind the registered trademark based on the latter request for a trial and the finalization of this decision was registered, the court held that the cosmetics for which the Defendant used the registered trademark as mentioned above were presumed to have not been manufactured by using that manufacturing method.

Case type: Rescission of Trial Decision of Rescission

Results: Dismissed

References: Article 50, paragraphs (1) and (2) of the Trademark Act

Related rights, etc.: Trademark Registration No. 4776699

Decision of JPO: Rescission Trial No. 2018-300004, Rescission Trial No. 2018-300005

### Summary of the Judgment

1. (1) The Defendant was the holder of a trademark right for the trademark for which goods in Class 3, "soaps and detergents, cosmetics, and perfume and flavor materials," are designated, and which consists of four black approximate squares respectively containing characters written in white, "三", "相", "乳", and "化" (Registration No. 4776699; the registration established on June 4, 2004, and the renewal of the term of the trademark right registered on April 15, 2014; the "Trademark"). On December 28, 2017, six requests for trials for partial rescission were filed to demand that the JPO rescind the registration of the Trademark on the ground of non-use under Article 50, paragraph (1) of the Trademark Act, while dividing the classification of the respective designated goods mentioned above on the basis of whether the respective goods are manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles (specified

emulsification technique) (Rescission Trials No. 2018-300002 to 300007).

(2) The Plaintiff filed a request for a trial (the "Request for the Trial") to seek a JPO decision to rescind the registration of the Trademark for goods in Class 3, "cosmetics (excluding cosmetics manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles)" (the "Goods Related to the Request") (Rescission Trial No. 2018-300004). In this trial, the JPO rendered a decision to maintain the registration of the Trademark (the "JPO Decision"). Dissatisfied with this, the Plaintiff filed this lawsuit to seek rescission of the JPO Decision. With regard to all of the five other requests among the abovementioned six requests for trials, the JPO rendered decisions to rescind the registration of the Trademark to the extent of the designated goods which pertain to each request for a trial, and the finalization of these decisions was respectively registered on October 5, 2018.

2. The Plaintiff did not dispute the JPO's finding that the Defendant had used the Trademark for cosmetics, "skin milk" (the "Goods Related to the Use"), during the period prescribed in Article 50, paragraph (2) of the Trademark Act, i.e., from January 23, 2015, to January 22, 2018 (the period for which proof of use is required). Instead, the Plaintiff disputed the JPO's determination that the use of the Trademark by the Defendant mentioned above can be regarded as the use for the Goods Related to the Request, despite the fact that the Defendant had not alleged or proved that the Goods Related to the Use were not manufactured by using the specified emulsification technique. In this judgment, the court dismissed the Plaintiff's claim, holding as summarized below.

(1) In light of the provisions of Article 50, paragraph (2) of the Trademark Act, the Defendant should bear the burden to allege and prove the use of the Trademark for the Goods Pertaining to the Request. Having examined to what extent the Defendant is required to allege and prove the facts so that the Defendant is deemed to have fully alleged and proved such use of the Trademark, the court can indicate the following points.

A. During the period for which proof of use is required, whether the goods were manufactured by using the specified emulsification technique was not a factor for limiting the scope of designated goods of the Trademark.

B. It is presumed that the Plaintiff was involved in not only the Request for the Trial, but also the five other requests for trials filed on the same day. Focusing on goods in Class 3, "cosmetics," both the Request for the Trial and another request for a trial in which cosmetics manufactured by using the specified emulsification technique were

specified as the goods pertaining to the request (the request for a trial that is paired with the Request for the Trial) were filed on the same occasion and through the involvement of the same person. The classification on the basis of whether the goods are manufactured by using the specified emulsification technique was set exclusively by the person filing the requests for trials, and the Defendant did not by itself limit the scope of designated goods.

C. The basis of the classification mentioned above cannot be regarded as a basis that would be generally or typically applied when classifying the types of goods. The specified emulsification technique cannot be regarded as having been well-known among consumers, etc. during the period for which proof of use is required, as circumstances related to the classification of goods, "cosmetics." In that case, it is still questionable whether classifying the designated goods, "cosmetics," into subcategories on that basis can itself be directly regarded as a classification that is appropriate for distinguishing the designated goods. In connection with this, according to relevant evidence, it is found that the specified emulsification technique is referred to as "三相乳化(three-phase emulsification)" in some cases. However, there are also statements to the effect that the specified emulsification technique was developed in 2005 and a patent application for this technique was filed in 2006. All the other materials submitted by the Plaintiff as evidence are dated on or after the date of registration of establishment of the Trademark. On the other hand, according to the matters stated in the Defendant's pamphlet, it is difficult to understand that the technique described there refers to a technique identical to the "three-phase emulsification" mentioned in the above cases or the specified emulsification technique.

(2) In light of the circumstances mentioned in (1) A. to C. above, looking at the Request for the Trial and the other request for a trial that is paired with the former, it should be said that the Defendant needs to only prove the use of the Trademark for the designated goods in Class 3, "cosmetics," and that if the Defendant has proved the use of the Trademark for goods that fall within the scope of designated goods in Class 3, "cosmetics," during the period for which proof of use is required, at least either the Request for the Trial or the other request for a trial that is paired with the former would be groundless. In that case, it is impermissible to determine that both requests are well-grounded because it is unclear whether the goods in question fall within the scope of the designated goods which pertains to either of these requests. This is in line with the purport of the provisions of Article 50, paragraph (2) of the Trademark Act which only require the proof of the use of the registered trademark for "any" of the designated goods or services.

From the viewpoint mentioned above, in the present case in which the JPO rendered a decision to rescind the registration of the Trademark to the extent of the designated goods which pertain to the request for a trial that is paired with the Request for the Trial, and the finalization of the JPO decision was registered, it is appropriate to consider that the goods which fall within the scope of "cosmetics" and for which the Defendant used the Trademark can be presumed to have not been manufactured by using the specified emulsification technique, even if it is unknown whether these goods were manufactured by using the specified emulsification technique.

Judgment rendered on November 4, 2021

2021 (Gyo-Ke) 10061, Case of seeking rescission of the JPO decision

Date of conclusion of oral argument: September 7, 2021

### Judgment

Plaintiff: X

Defendant: Aoi Co., Ltd.

### Main text

1. The Plaintiff's claim shall be dismissed.
2. The Plaintiff shall bear the court costs.

### Facts and reasons

#### No. 1 Claim

The decision made by the Japan Patent Office (JPO) on March 29, 2021, for the case of Rescission Trial No. 2018-300004 shall be rescinded.

#### No. 2 Outline of the case

This case is a lawsuit to seek rescission of a decision by the JPO (the "JPO Decision") that maintained the trademark registration in response to the request filed for a trial to rescind the registration of the trademark in question on the grounds that the trademark was not in use (Article 50, paragraph (1) of the Trademark Act).

##### 1. The trademark in question

The Defendant is the holder of a trademark right for the trademark with the composition as indicated in the attachment (Registration No. 4776699; hereinafter referred to as the "Trademark"). The registration history of the Trademark is as follows: an application for registration was filed on September 25, 2003; the establishment of the trademark right was registered on June 4, 2004, designating goods in Class 3, "soaps and detergents, cosmetics, and perfume and flavor materials"; and the renewal of the trademark right was registered on April 15, 2014 (Exhibits Ko 1-1 and 1-2).

##### 2. History of procedures at the JPO

(1) On December 28, 2017, requests for trials for partial rescission of the trademark registration were filed with regard to the goods specified in A. to F. below among the designated goods of the Trademark (the trial case number relevant to each request is

indicated at the end of each of A. to F. below; hereinafter the goods specified in C. below are referred to as the "Goods Pertaining to the Request," the request for a trial to which the Goods Pertaining to the Request pertain is referred to as the "Request for the Trial," and the requests for trials regarding the five goods specified in A., B., and D. to F. below are collectively referred to as the "Other Requests for Trials Filed on the Same Date").

A. Class 3 "soaps and detergents (excluding soaps manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles)" (Rescission Trial No. 2018-300002)

B. Class 3 "soaps and detergents manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles" (Rescission Trial No. 2018-300003)

C. Class 3, "cosmetics (excluding cosmetics manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles)" (Goods Pertaining to the Request) (Rescission Trial No. 2018-300004)

D. Class 3, "cosmetics manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles" (Rescission Trial No. 2018-300005)

E. Class 3 "perfume and flavor materials (excluding perfume and flavor materials manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles)" (Rescission Trial No. 2018-300006)

F. Class 3, "perfume and flavor materials manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles" (Rescission Trial No. 2018-300007)

(2) The Request for the Trial was registered on January 23, 2018. Accordingly, in the case of the Request for the Trial, the period referred to in Article 50, paragraph (2) of the Trademark Act, i.e., "three years prior to the registration of the request for the trial," is the period from January 23, 2015, to January 22, 2018 (hereinafter referred to as the "period for which proof of use is required"). The Other Requests for Trials Filed on the Same Date were registered on the same day, January 23, 2018 (Exhibit Ko 1-1).

(3) Regarding the Other Requests for Trials Filed on the Same Date, the JPO rendered decisions to rescind the registration of the Trademark to the extent of the designated goods which pertain to each request for a trial, and the finalization of these decisions was respectively registered on October 5, 2018.

On the other hand, with regard to the Request for the Trial, the JPO rendered a decision to maintain the trademark registration (hereinafter referred to as the "JPO Decision") on March 29, 2021, and a certified copy thereof was served upon the Plaintiff on April 8, 2021.

(4) As mentioned in (1) to (3) above, the Request for the Trial is one of the six requests for trials filed on the same day by classifying "soaps and detergents," "cosmetics" and "perfume and flavor materials," which are the goods designated for the Trademark (all in Class 3), respectively on the basis of whether the respective goods are manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles (hereinafter referred to as "specified emulsification technique"), thereby dividing all of the designated goods of the Trademark into six subcategories.

### 3. Summary of the reasons for the JPO Decision

(1) According to the evidence submitted and allegations made by the Defendant, the following facts can be found: [i] on September 14, 2016, the Defendant received the delivery of 3,000 copies of the Defendant's "pamphlet of goods" (Exhibit Ko 3-3-9; hereinafter referred to as the "Pamphlet") from a printing company; [ii] on the Pamphlet, the goods in question, "skin milk" (hereinafter the "Goods Related to the Use"), were shown together with a mark consisting of four black approximate squares respectively containing characters written in white, "三", "相", "乳", and "化" (hereinafter the "mark in use"); and [iii] around March 2016, the goods that are the same as those shown on the Pamphlet (Exhibit Ko 3-3-9) were posted on the Defendant's webpage (Exhibit Ko 6-3-4; hereinafter referred to as the "Webpage").

(2)A. The Goods Related to the Use are "skin milk," which is explained on the Defendant's Pamphlet and the Webpage as "milk lotion created by applying a unique emulsification technique established through research into human sebum, which is called three-phase emulsification, and using ingredients that are substantially identical with the composition of sebum." Thus, the Goods Related to the Use can be described as milk lotion manufactured by an emulsification technique called "three-phase emulsification."

The Plaintiff alleges that cosmetics manufactured by using the specified emulsification technique mean "cosmetics manufactured by using the three-phase emulsification technique" and that the Goods Pertaining to the Request are "cosmetics manufactured by using the three-phase emulsification technique." However, it cannot be said that the technique called "three-phase emulsification" is clearly defined, and in the absence of a clear definition, "cosmetics manufactured by using the three-phase

emulsification technique" cannot be regarded as cosmetic manufactured by using the specified emulsification technique.

It follows that, although the Goods Related to the Use, "skin milk," can be regarded as "cosmetics (milk lotion) manufactured by using the three-phase emulsification technique" but cannot be regarded as goods included in the scope of exceptions, out of the cosmetics manufactured by using the specified emulsification technique, as referred to in the brackets in the description of the Goods Pertaining to the Request; therefore, the Goods Related to the Use are found to be goods that fall within the scope of the Goods Pertaining to the Request.

B. The user of the mark in use is the Defendant, and the period during which the Pamphlet was created falls within the period for which proof of use is required. It can be presumed that the Pamphlet was created and distributed by the Defendant with the aim of providing it to its customers. In addition, it can be said that the goods that are the same as those shown on the Pamphlet were posted on the Defendant's Webpage during the period for which proof of use is required.

C. The mark in use can be found to be identical with the Trademark.

D. Based on the facts mentioned in A. to C. above, it can be said that in Japan, during the period for which proof of use is required, the Defendant distributed or provided by electronic or magnetic means the Pamphlet and internet advertisement of the goods "skin milk," which are included in the Goods Pertaining to the Request, by affixing the Trademark to that pamphlet and advertisement, and this act constitutes the act to "display or distribute advertisement materials, price lists or transaction documents relating to goods or services to which a mark is affixed, or to provide information on this content, to which a mark is affixed by electronic or magnetic means" (Article 2, paragraph (3), item (viii) of the Trademark Act).

(3) Consequently, with regard to the Goods Pertaining to the Request, the registration of the Trademark cannot be rescinded under Article 50 of the Trademark Act.

(omitted)

### No. 3 Judgment of this court

#### 1. Regarding the use of the Trademark

According to evidence (Exhibit Ko 3-3-9 and Exhibit Ko 6-3-4) and the entire import of oral arguments, it is found that during the period for which proof of use is required, the Defendant distributed to its customers the Pamphlet (Exhibit Ko 3-3-9) on which the Goods Related to the Use are shown together with the mark in use, which is



found to be identical with the Trademark, and also posted the Goods Related to the Use on the Webpage (Exhibit Ko 6-3-4) together with the mark in use.

## 2. Regarding Ground for Rescission 1

(1) In light of the provisions of Article 50, paragraph (2) of the Trademark Act, the Defendant should bear the burden to allege and prove the use of the Trademark in connection with the Goods Pertaining to the Request, which are the designated goods pertaining to the Request. However, the Defendant, only based on the statements specifying the Goods Pertaining to the Request, alleges that the Plaintiff bears the burden to prove that these goods are cosmetics manufactured by using the specified emulsification technique. This allegation of the Defendant cannot be accepted.

(2) Then, having examined to what extent the Defendant is required to allege and prove the facts so that the Defendant is deemed to have fully alleged and proved the use of the Trademark as mentioned in (1) above in connection with Class 3, "cosmetics (excluding cosmetics manufactured by not using surface active agents but instead using an emulsification technique that uses the physical acting force of hydrophilic nanoparticles)," which are the Goods Pertaining to the Request, the court can indicate the following points.

A. The period for which proof of use is required is from January 23, 2015, to January 22, 2018. Since the date of registration of the Other Requests for Trials Filed on the Same Date is January 23, 2018, the designated goods of the Trademark were Class 3, "soaps and detergents, cosmetics, and perfume and flavor materials," during the period for which the Defendant should allege and prove the use of the Trademark, and whether or not these goods were manufactured by using the specified emulsification technique was not a factor for limiting the scope of designated goods of the Trademark (see Article 54, paragraph (2) of the Trademark Act).

B. As mentioned in No. 2, 1. above, the establishment and renewal of the trademark right for the Trademark were registered /by designating Class 3, "soaps and detergents, cosmetics, and perfume and flavor materials," as designated goods. As mentioned in No. 2, 2. above, on December 28, 2017, the Request for the Trial and the Other Requests for Trials Filed on the Same Date were filed by classifying "soaps and detergents," "cosmetics" and "perfume and flavor materials" (all in Class 3), respectively on the basis of whether the respective goods are manufactured by using the specified emulsification technique, thereby dividing all of the designated goods of the Trademark into six subcategories. In view of the entire import of oral arguments, coupled with the fact that multiple requests for trials in which the respective goods were classified on the basis of the same criterion were filed on the same day and were given successive

trial case numbers, it is presumed that the Plaintiff was involved not only in the Request for the Trial, but also in these five other requests for trials filed on the same day.

In connection with the above, focusing on goods in Class 3, "cosmetics," which constitute part of the designated goods of the Trademark, both the Request for the Trial, in which cosmetics excluding those manufactured by using the specified emulsification technique were specified as the designated goods pertaining to the request, and another request for a trial, in which cosmetics manufactured by using the specified emulsification technique were specified as the designated goods pertaining to the request (Rescission Trial No. 2018-300005; hereinafter referred to as the "Corresponding Request for a Trial"), were filed on the same occasion and through the involvement of the same person. The classification on the basis of whether the goods are manufactured by using the specified emulsification technique was set exclusively by the person filing the requests for trials, and the Defendant did not by itself limit the scope of designated goods.

C. (a) The classification on the basis of whether the goods are manufactured by using the specified emulsification technique does not constitute, or does not directly comply with or conform to, either the classification under the appended table of the Enforcement Order of the Trademark Act or the appended table of the Enforcement Regulation of the Trademark Act, but it is a classification by the method of manufacturing goods, and cannot be regarded as a basis that would be generally or typically applied when classifying the types of goods. Even in consideration of all evidence submitted in this case, the specified emulsification technique cannot be regarded as having been well-known among consumers, etc. during the period for which proof of use is required, as circumstances related to the classification of goods, "cosmetics." In that case, it is still questionable whether classifying the designated goods, "cosmetics," into subcategories on such basis can itself be directly regarded as a classification that is appropriate for distinguishing the designated goods.

(b) In connection with the point mentioned above, according to relevant evidence, it is found that the specified emulsification technique, that is, the emulsification technique that uses the physical acting force of hydrophilic nanoparticles, is referred to as "三相乳化(three-phase emulsification)" in some cases. However, evidence (Exhibit Ko 4-2-1) states that the specified emulsification technique was developed in 2005, after the date of registration of establishment of the trademark right for the Trademark (June 4, 2004), and a patent application for this technique was filed in 2006. All the other materials submitted by the Plaintiff as evidence regarding the specified emulsification technique (Exhibits Ko 4-2-2 to 4-2-7) are dated on or after the date of registration of

establishment of the trademark right for the Trademark.

(c) On the other hand, the Pamphlet (Exhibit Ko 3-3-9) contains statements such as: "three-phase emulsification is a technique established by Dr. A, who has engaged in research into skin and cosmetics for more than 30 years and has found that the human skin has three phases"; and "This product is emulsified by our unique know-how that we inherited from Dr. A. It does not contain any synthetic surfactant or nanoparticle which is said to involve a safety concern." According to these statements, it is difficult to regard the "three-phase emulsification" technique described in the Pamphlet as being identical with the "three-phase emulsification" technique that is found to be called as such in some cases after the date of registration of establishment of the trademark right for the Trademark mentioned in (b) above, and it is also difficult to understand that it directly refers to the specified emulsification technique.

(3) In light of the circumstances mentioned in (2) A. to C. above, setting aside the fundamental question as to the appropriateness of the classification of the designated goods on the basis of whether the goods are manufactured by using the specified emulsification technique, if the Request for the Trial, which targets the Goods Pertaining to the Request, i.e., cosmetics excluding those manufactured by using the specified emulsification technique, and the Corresponding Request for a Trial, which targets cosmetics manufactured by using the specified emulsification technique, are taken into consideration when examining the Defendant's burden to prove the use of the Trademark in connection with the Goods Pertaining to the Request during the period for which proof of use is required, it should be said that the Defendant needs to only prove the use of the Trademark in connection with the designated goods in Class 3, "cosmetics." (As long as the proceedings of these requests for trials are conducted separately, the Defendant should make allegations and give proof separately for each trial on this matter.) It should also be said that if the Defendant has proved the use of the Trademark in connection with goods that fall within the scope of designated goods in Class 3, "cosmetics," during the period for which proof of use is required, at least either the Request for the Trial or the Corresponding Request for a Trial would be groundless from a conceptual perspective; or more specifically, if the goods in question fall within the scope of the Goods Pertaining to the Request, at least the Request for the Trial would be groundless, and if the goods in question falls within the scope of the designated goods pertaining to the Corresponding Request for a Trial, at least the Corresponding Request for a Trial would be groundless. In that case, it is impermissible to determine that both requests are well-grounded because it is unclear whether the goods in question fall within the scope of the Goods Pertaining to the Request or the

scope of the designated goods pertaining to the Corresponding Request for a Trial. This is in line with the purport of the provisions of Article 50, paragraph (2) of the Trademark Act, which only require the proof of the use of the registered trademark in connection with "any" of the designated goods or services.

From the viewpoint mentioned above, in the present case in which the JPO rendered a decision to rescind the registration of the Trademark to the extent of the designated goods which pertain to the Corresponding Request for a Trial, and the finalization of the JPO decision was registered on October 5, 2018 (No. 2, 2. (3) above), it is appropriate to consider that the goods which fall within the scope of "cosmetics" and for which the Defendant used the Trademark can be presumed to have not been manufactured by using the specified emulsification technique, even if it is unknown whether these goods were manufactured by using the specified emulsification technique.

(4) For the reasons stated above, Ground for Rescission 1 is unfounded.

(5) Regarding the Plaintiff's allegation

A. The Plaintiff alleges that the Defendant should further allege and prove the use of the Trademark in connection with cosmetics other than those manufactured by using the specified emulsification technique. However, as explained above, this allegation cannot be accepted.

B. The Plaintiff cites Article 50, paragraph (2) of the Trademark Act as the basis for the above allegation. This paragraph states "unless the demandee proves that [...] has used the registered trademark...in connection with any of the designated goods or designated services pertaining to the request." The part "the designated goods or designated services pertaining to the request" in this phrase cannot be interpreted as directly requiring the Defendant to further allege and prove the use of the Trademark in connection with cosmetics other than those manufactured using the specified emulsification technique.

The scope of designated goods that is subject to the proceedings conducted in response to a request for a trial for rescission, as provided in Article 50 of the Trademark Act, is not determined based on the statement of the designated goods indicated in the registration of establishment of the trademark right, but it is determined based on the statement of the "object of the request" in the written request for a trial filed by the demandant seeking rescission of the registration. The "object of the request" in the written request for a trial is important in that it defines the subject and scope of the proceedings in the trial and determines the scope of designated goods for which the registration of the trademark would be effective when a trial decision becomes final and binding, and it is also important in that it guarantees an opportunity for the demandee

to determine the necessity to defend itself and prepare defense. In the present case, although the part of the designated goods of the Trademark that was relevant to the period for which proof of use is required was Class 3, "cosmetics," the Plaintiff (the demandant) exclusively divided a request for a trial for rescission into the Request for the Trial and the Corresponding Request for a Trial based on the specified emulsification technique, which is found to have been recognized after the date of registration of the Trademark and which is not found to have been well-known throughout the period for which proof of use is required, and demanded in the Corresponding Request for a Trial that the Defendant (the demandee) allege and prove the use of the Trademark, including the fact that the cosmetics were manufactured by using the specified emulsification technique, while, at the same time, demanding in the Request for the Trial that the Defendant allege and prove the use of the Trademark, including the fact that the cosmetics were not manufactured by using the specified emulsification technique. Such conduct of the Plaintiff is significantly detrimental to the Defendant's opportunity to prepare its defense, and Article 50, paragraph (2) of the Trademark Act, which requires the demandee to only prove the use of the registered trademark in connection with "any" of the designated goods or services as mentioned above, cannot be understood as further requiring the demandee to prove the abovementioned fact. In particular, in the present case in which the demandant (the Plaintiff) arbitrarily set the specification of the manufacturing method, if it is considered that the trademark right holder (the Defendant) cannot avoid the rescission of the trademark registration unless it proves the use of the registered trademark by disclosing the manufacturing method of its goods, this is clearly unreasonable because it imposes excessive burden on the trademark right holder. The Plaintiff's allegation that would result in requiring the Defendant to prove as such is unacceptable also in light of the principle of good faith.

### 3. Regarding Ground for Rescission 2

(1) The Goods Related to the Use, which are found as mentioned in 1. above, are presumed to have not been manufactured by using the specified emulsification technique as determined in 2. above, and circumstances that are sufficient to rebut this presumption cannot be found. Rather, the fact that the Pamphlet (Exhibit Ko 3-3-9) and the Defendant's Website (Exhibit Ko 6-3-3) contain a statement that "[it] does not contain any...nanoparticle" is in line with the abovementioned presumption.

(2) Consequently, Ground for Rescission 2 is unfounded. The Plaintiff's allegation that is contrary to this cannot be accepted.

### 4. Summary

Accordingly, since it is found that the Defendant, the trademark right holder, used the Trademark during the period for which proof of use is required, it cannot be said that the registration of the Trademark should be rescinded under Article 50, paragraph (1) of the Trademark Act.

No. 4 Conclusion

For the reasons stated above, the Plaintiff's claim is groundless, and therefore it shall be dismissed, and the judgment shall be rendered as indicated in the main text.

Intellectual Property High Court, Second Division

Presiding judge: HONDA Tomonari

Judge: NAKAJIMA Tomohiro

Judge: KATSUMATA Kumiko

Attachment

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