

Trademark Right	Date	September 7, 2023	Court	Intellectual Property High Court, Second Division
	Case number	2023 (Gyo-Ke) 10030		
- A case in which the court held that a trademark consisting of the characters, "くるんっと前髪カーラー (kurunto maegami kahrah)", written in standard characters, with the designated goods of "Hair curlers [non-electric]", falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act.				

Case type: Rescission of Trial Decision to Maintain

Result: Granted

References: Article 3, paragraph (1), item (iii) of the Trademark Act

Related rights, etc.: Trademark Registration No. 6399042

Decision of JPO: Invalidation Trial No. 2022-890041

### Summary of the Judgment

1 Defendant is the holder of a trademark consisting of the characters, "くるんっと前髪カーラー", written in standard characters, with the designated goods of "Hair ornaments; Hair curlers [non-electric]" in Class 26 (hereinafter referred to as "Trademark"). Plaintiff argued that, in regards to "Hair curlers [non-electric]" (hereinafter referred to as "Goods") from among the above designated goods, the Trademark falls under a trademark listed in Article 3, paragraph (1), item (iii) or (vi) of the Trademark Act, or Article 4, paragraph (1), item (xvi) of the same Act, and filed a request for a trial for invalidation of registration of the Trademark for the Goods. In response, the JPO rejected Plaintiff's above argument entirely and rendered the decision not to approve the request. The present case is one in which Plaintiff demanded rescission of the JPO's decision.

2 In the judgment of the present case, the court determined that the Trademark for the Goods falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act, as described below, and rescinded the JPO's decision.

#### (1) Composition of the Trademark

The characters making up the Trademark are of the same size and font, and these characters are laid out evenly in a single horizontal line, in a unified manner. As such, it is understood that the Trademark, with all the characters that make up the Trademark, shows an integral phrase. Upon determining the applicability of the Trademark to Article 3, paragraph (1), item (iii) of the Trademark Act, it is necessary to consider, in addition to the meaning of each of the words making up such integral phrase, and in light of the actual circumstances of the transaction, whether said integral phrase is generally recognizable by traders and consumers as indicating the

quality, efficacy, intended purpose, and other features of goods (refer to the judgment rendered by the Supreme Court, First Petty Bench on January 23, 1986 (1985 (Gyo-Tsu) No. 68); Civil Cases No. 147, page 7).

(2) Recognition by traders and consumers coming in contact with the Trademark

As of the day of the decision of registration pertaining to the Trademark (hereinafter referred to as "Day of Decision"), according to a Japanese-language dictionary that is considered to be highly credible in Japan, each of the words "前髪 (maegami)" and "カーラー (kahrah)" has the meaning, respectively, of "hair that falls over one's forehead" and a "cylindrical tool used for curling hair by wrapping the hair around it". Meanwhile, according to the entire import of oral argument, it is acknowledged that, as of the Day of Decision, the fact that each of the words had such meaning was quite clear to the traders or consumers for the Goods (the traders or consumers for the Goods as of the Day of Decision are hereinafter referred to as "Consumers, etc.>").

On the other hand, in light of the meaning and usage of the word "くるん (kurun)" according to the dictionary, and examples of use of words such as "くるんと" [Translator's note: It is read as "kurunto" and means a state of something being curled.] on websites and in newspaper articles prior to the Day of Decision, as well as the Japanese language grammar, the word "くるん" when used for bangs and other parts of hair, usually indicates a "state of (hair) having a rounded curve". In addition, in light of examples of use of words such as "くるんと" on websites, it cannot be acknowledged that the word "くるんと" and the word "くるんつと" [Translator's note: It is read as "kuruntto" and means a state of something being curled.], have meanings that are different from one another due to the presence of a choked sound. In that case, the subject of the word "くるんつと" that is positioned immediately preceding the word "前髪", from among the constituent parts of the Trademark, is obvious even if there is no clear indication of a declinable word (verb, adjective, etc.) which, as an adverb, it should modify. As such, it is reasonable to acknowledge that the word "くるんつと" is ordinarily recognized by Consumers, etc. as an indication of a "state of (bangs) having a rounded curve".

Based on the above, even when taking into consideration the fact that, as of the Day of Decision, there is no evidence to sufficiently acknowledge that there are examples of use of the phrase "くるんつと前髪カーラー" or an equivalent phrase for the Goods, other than Defendant's goods (bearing the Trademark) and Plaintiff's goods (with the product name of "前髪くるんとカーラー"), it is reasonable to

acknowledge that Consumers, etc. coming in contact with the phrase "くるんっと前髪カーラー" will ordinarily recognize said phrase as referring to a "curler for giving a rounded curve to bangs".

(3) Applicability of the Trademark to Article 3, paragraph (1), item (iii) of the Trademark Act

As described above in (2), Consumers, etc. coming in contact with the phrase "くるんっと前髪カーラー" will recognize said phrase as referring to a "curler for giving a rounded curve to bangs". Meanwhile, given that a "curler" is a "cylindrical tool for wrapping hair around it to create curls", the phrase "くるんっと前髪カーラー" is merely a description of the efficacy, etc. of the Goods. In addition, the Trademark consists solely of the phrase "くるんっと前髪カーラー" and shows said phrase in standard characters in a commonly used manner (it cannot be said that an expression using the word "くるんっと", which is made up of the word "くるんと" and a choked sound added thereto, is special). Accordingly, since it can be said that the Trademark is a trademark consisting solely of a mark which indicates the quality and efficacy, etc. of the Goods in a commonly used manner, the Trademark falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act.

It should be noted that, given that "くるんっと前髪カーラー" is a mark which indicates the quality and efficacy, etc. of the Goods in a commonly used manner as referring to a "curler for giving a rounded curve to bangs", it is naturally assumed that other business operators, upon engaging in manufacture and sale, etc. of goods, which fall under the Goods, would try to use the same or similar mark as "くるんっと前髪カーラー". Accordingly, the court cannot accept Defendant's argument that there is no adverse effect to granting exclusive use for the mark of "くるんっと前髪カーラー".

Rendition of judgment on September 7, 2023

2023 (Gyo-Ke) 10030 Case of seeking rescission of JPO decision

Date of conclusion of oral argument: July 13, 2023

## Judgment

Plaintiff: Shobido Corporation

Defendant: NOBLE co., LTD.

## Main text

1. The decision made by the JPO concerning Invalidation Trial No. 2022-890041 on February 14, 2023 shall be rescinded.
2. Defendant shall bear the court costs.

## Facts and reasons

### No. 1 Claims

Same as the first paragraph of the main text.

### No. 2 Background

The present case is a suit against the JPO's decision not to approve a request for a trial for invalidation of trademark registration. Issues are [1] whether or not the registered trademark, indicated below as 1 (hereinafter referred to as "Trademark"), falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act, [2] whether or not the Trademark falls under a trademark listed in Article 3, paragraph (1), item (vi) of the same Act, and [3] whether or not the Trademark falls under a trademark listed in Article 4, paragraph (1), item (xvi) of the same Act.

#### 1. Registered Trademark

Defendant is the holder of the following registered trademark (Trademark) (Exhibits Ko 1-1 and 1-2; hereinafter the trademark registration for the Trademark is referred to as "Trademark Registration").

(1) Registration No.: Trademark Registration No. 6399042

(2) Date of decision of registration: May 24, 2021 (hereinafter referred to as "Day of Decision")

(3) Registration date: June 7, 2021

(4) Composition of trademark: "くるんつと前髪カーラー (kuruntto maegami kahrah)" (standard characters)

(5) Classification of goods and services, and designated goods

Class 26 "Head ornaments; Hair curlers [non-electric]" (from among the foregoing, "Hair curlers [non-electric]" in Class 26 are hereinafter referred to as "Goods")

2. History of procedures at JPO

On June 2, 2022, Plaintiff filed a request for a trial for invalidating the Trademark Registration for the Goods, and the JPO examined the case as Invalidation No. 2022-890041 (the parties agree on this point).

On February 14, 2023, the JPO made a decision that "the present request for a trial is groundless" (hereinafter referred to as "Decision"), and a copy of the decision was sent to Plaintiff on the 27th of the same month (entire import of oral argument).

On March 27, 2023, Plaintiff filed the present lawsuit seeking rescission of the JPO's Decision.

3. Summary of JPO's Decision

(1) Applicability of Article 3, paragraph (1), item (iii) of the Trademark Act

A. The Trademark is made up of the characters, "くるんつと前髪カーラー", written in standard characters. The constituent characters of the Trademark have the same size and font, and these characters are laid out evenly in a single horizontal line, in a unified manner. As such, the entirety of the constituent characters represents an integral phrase.

Constituent characters of the Trademark consist of the characters "くるん (kurun)", which constitute an onomatopoeic expression for a "state of being bouncy and lightly curled" (Exhibit Ko 8), the characters "前髪 (maegami)", having the meaning of a "a bundle of hair above the forehead of a man or woman" (Exhibit Ko 11), and the characters "カーラー (kahrah)", having the meaning of a "tool for wrapping hair around it to create curls" (Exhibit Ko 12), joined together using a choked sound of "つ (ttsu)" and a case particle of "と (to)" and the like. Meanwhile, in terms of the entirety of constituent characters, there are not sufficient words to identify the meaning as an idiom or sentence. As such, even if a vague meaning that corresponds to the meaning of each character can be evoked, it is difficult to immediately recognize or understand the specific meaning, and thus the constituent characters lack specificity as a quality labeling for goods.

B. It is understandable that in beauty-related magazine articles and other information found online, the onomatopoeic expression of "くるんつ", which shows a state of hair being curled, is used, for example, in the following cases:

"Add a curl to your bangs and you will be more popular!" (Exhibit Ko 13-1);  
"Sandwich your hair and give it a curl for ideal bangs" (Exhibit Ko 13-3);  
"How to style your not-long-enough bangs beautifully by giving them a rounded curve" (Exhibit Ko 13-5). However, there cannot be found any facts showing that a sentence that consists of character composition like the Trademark is generally adopted or used in business as an idiomatic expression that indicates the specific quality, etc. of goods.

C. As described above, since the Trademark is not a specific indication of the quality of goods in relation to the Goods, the Trademark does not fall under Article 3, paragraph (1), item (iii) of the Trademark Act.

(2) Applicability of Article 3, paragraph (1), item (vi) of the Trademark Act

As described above in (1) A, the Trademark shows an integral phrase with all the constituent characters, and even if a vague meaning that corresponds to the meaning of each character can be evoked, it is difficult to immediately recognize or understand the specific meaning as well.

Furthermore, as described above in (1) B, there cannot be found any facts showing that a sentence that consists of character composition like the Trademark is generally adopted or used in business as an idiomatic expression that indicates the specific quality, etc. of goods.

Accordingly, since it cannot be said the Trademark can be recognized by consumers as pertaining to a person's business, the Trademark does not fall under Article 3, paragraph (1), item (vi) of the Trademark Act.

(3) Applicability of Article 4, paragraph (1), item (xvi) of the Trademark Act

As described above in (1) A, the Trademark shows an integral phrase with the entirety of constituent characters, and even if a vague meaning that corresponds to the meaning of each character can be evoked, it is difficult to immediately recognize or understand a specific meaning as well.

In addition, from among the composition of the Trademark, the character part "カーラー" at the end of the phrase is a word that has the meaning of a "tool for wrapping hair around it to create curls" (Exhibit Ko 12), and corresponds to the Goods.

Accordingly, the Trademark is, in relation to the Goods, not a trademark that has a risk of causing misunderstanding as to the quality of goods, and does not fall under Article 4, paragraph (1), item (xvi) of the Trademark Act.

(4) Conclusion

Based on what is described above, the Trademark Registration is not in

violation of Article 3, paragraph (1), item (iii) or (vi) of the Trademark Act, or Article 4, paragraph (1), item (xvi) of the Trademark Act, so that it cannot be invalidated pursuant to the provisions of Article 46, paragraph (1), item (i) of the same Act.

(omitted)

#### No. 5 Judgment of this court

#### 1. Rescission Reason 1 (Erroneous determination as to applicability of Article 3, paragraph (1), item (iii) of the Trademark Act)

##### (1) Composition of the Trademark

The Trademark consists of the characters, "くるんつと前髪カーラー", written in standard characters. As such, the characters making up the Trademark are naturally of the same size and font, and these characters are laid out evenly in a single horizontal line, in a unified manner. Accordingly, it is understood that the Trademark, with all the characters that make up the Trademark, shows an integral phrase. Upon determining the applicability of the Trademark to Article 3, paragraph (1), item (iii) of the Trademark Act, it is necessary to consider, in addition to the meaning of each of the words making up such integral phrase, and in light of the actual circumstances of the transaction, whether said integral phrase is generally recognizable by traders and consumers as indicating the quality, efficacy, intended purpose, and other features of goods (refer to Supreme Court Judgment of 1986).

##### (2) Recognition by traders and consumers coming in contact with the Trademark

###### A. Description in a dictionary

(A) According to Exhibit Ko 8 ("Giongo/Gitaigo 4500 Nihongo Onomatopoeic Jiten"; edited by Masahiro Ono and published in 2007), the word "くるん" is defined as a "state of turning around in a bouncy manner, or a state of being lightly curled". An example of use indicated therein reads: "Many people, regardless of age, consider ideal eyelashes to be those of a Barbie doll, which has 'eyelashes that are curled with a rounded curve'". In addition, according to Exhibit Ko 10 ("Kurashino Kotoba Gion/Gitai Jiten"; edited by Nakami Yamaguchi and published in 2003), the word "くるん" is defined as a "state in which an object, which becomes bouncy with the help of the force that is initially applied, lightly makes a full rotation or a half rotation". An

example of use indicated there reads: "I made a half rotation along with my car".

(B) According to Exhibit Ko 11 ("Kojien, The 7th Edition"; edited by Izuru Shinmura and published in 2018), the word "前髪" is defined as "hair that falls over one's forehead", among others.

(C) According to Exhibit Ko 12 ("Kojien, The 7th Edition"; edited by Izuru Shinmura and published in 2018), the word "カーラー" is defined as a "cylindrical tool used for curling hair by wrapping the hair around it".

B. Examples of use found on websites (Due to the nature of their use as evidence below, only those that are acknowledged as being posted before May 24, 2021 are listed herein although there are other examples of use per se.)

(A) Exhibit Ko 13-2 (posted in 2019) shows the following indication under the title of "[How to style bangs] Easy and curly bangs": "In this video, I am going to show you how to curl bangs. This time, with longish bangs, I will show you a style that looks a little more feminine with the tip of the hair rounded into a curve".

(B) Exhibit Ko 13-5 (posted in 2017) reads: "How to style your not-long-enough bangs beautifully by giving it a rounded curve. For many of you who want to curl your hair beautifully but who seem to find it difficult to find a balance when the curl is too strong".

(C) Exhibit Ko 13-6 (posted in 2018) indicates "Miss Cafe-Au-Lait Troop with their charming curly bangs and cheeks" above a picture of persons having rounded bangs.

(D) Exhibit Ko 13-7 (posted in 2016) reads: "Mega change into a lovable girl with curly cute <<heart-shaped bangs>> ... Create an upside-down heart shape by curling bangs inward ... The point is with curly bangs ... Simply curling the bangs will increase loveliness".

(E) Exhibit Ko 13-16 (posted in 2015) reads: "My naturally curly hair causes my bangs to make a rounded curve ... Is there a way to make the rounded curve go away while at the same time treating the damage to bangs? ... Please tell me a way to prevent bangs from being curled".

(F) Exhibit Ko 13-18 (posted in 2011) reads: "I hate how my bangs have a wavy curl, and I want only the bangs to be straightened with perm, but if possible, I would rather do nothing like that, yet make my



bangs as straight as possible".

- (G) Exhibit Ko 13-19 (posted in 2012) reads: "I have naturally curly bangs and they always curl up. How can I fix it?"
- (H) Exhibit Ko 13-20 (posted in 2013) reads: "I want to try giving a rounded curve to the bangs and sweep the bangs to the side, but it was devastatingly unflattering. Since then I keep my bangs AKB style in spite of my age".
- (I) Exhibit Ko 13-21 (posted in 2017) indicates, under the title "How to make bangs curly!", "This time, I made a video of how to make bangs curly ... It is perfectly okay to use a hair iron, but since I found it easy to burn myself with it, I, Rikariko, use a straightening iron ... If you have other requests about hair arrangement and how to curl hair, contact me on twitter".
- (J) Exhibit Ko 13-25 (posted in 2020) reads: "Curly eyelashes like those of a doll! ... Now you can make doll-like eyelashes that last long!!"
- (K) Exhibit Ko 24 (posted in 2018) indicates "The curler for bangs should be as slim as to enable you to wrap the hair approximately 1.5 times in order to create a curly finish".
- (L) Exhibit Ko 25 (posted in 2017) reads: "Curly ... Curly bangs are girls' favorite and a dream" underneath a photograph of a wig with bangs that have a rounded curve.
- (M) Exhibit Ko 26 (posted in 2018) reads: "USB-type curler for bangs is a curler, which you can purchase at a hundred yen store and the like, equipped with a USB port! Using only a charger for smartphones, PC, and a mobile battery, the curler can be heated in 2 to 3 minutes, and you can simply sandwich your hair for several seconds to create a rounded curve."
- (N) Exhibit Otsu 4-1 (posted in 2020) indicates, as an introduction of the method of use of Defendant's Product, "It gives a rounded curve to the hair".
- (O) Exhibit Otsu 4-2 (posted in 2018) indicates, as a review of Defendant's Product, "Simply sandwiching the hair and giving it a rounded curve holds the hair firmly and keeps it up. It is easy to carry and convenient, and I find it very useful".
- (P) Exhibit Otsu 8-3 (posted in 2020) explains Defendant's Product as

follows: "Gives hair a natural curl".

- (Q) Exhibit Otsu 8-5 (posted in 2020) explains Defendant's Product as follows: "Airy bangs ... You will feel lighter when the bangs have a perfect curl ... You sandwich the hair and give it a rounded curve through super easy steps for an ideal style" and "I love it, too, because this requires no work or skill but creates a nice curly style for bangs!"
- (R) Exhibit Otsu 9-6 (posted in 2020) explains Defendant's Product as follows: "Simply sandwich the hair and give it a curl ... It is a wonder how bangs can be curled so easily at a low cost but look proper and nice".
- (S) Exhibit Otsu 10-2 (posted in 2020) explains Defendant's Product as follows: "By using a curler for bangs, you can create curly and cute bangs in four steps!"

C. Examples of use in newspaper articles

- (A) Exhibit Ko 13-8 (posted in 2013) reads: "Since I believe I strongly carry an image of having long hair with bangs that are curled, I wanted to change my looks completely so that I can draw the viewers into the work".
- (B) Exhibit Ko 13-9 (posted in 2010) reads: "While in elementary school, I really liked the cartoon 'Candy Candy' in which the main character, like in the original manga, has long curly hair tied together above the ears. I curled my straight hair with my mother's curler and made painful efforts to be Candy. However, the bangs which I cut myself did not curl in the middle to make a rounded curve but instead bounced to a wrong direction".
- (C) Exhibit Ko 13-10 (article in 2008) reads: "In Tokara goats ... males are characterized by their curled bangs".
- (D) Exhibit Ko 13-11 (article in 1998) reads: "With her bangs that are curled with a rounded curve and her wavy long hair billowing in the wind like Medusa, a bus tour guide in a green suit and pumps leads customers for a tentative view of the cliff".
- (E) Exhibit Ko 13-12 (posted in 1991) reads: "A friend who went to a concert to take standing room furiously exclaimed, 'A woman in front of me had a crest up on her head and I could not see a thing!' A crest is a hairstyle for young girls who leave half of the bangs falling over the forehead and curl the other half into a rounded curve to keep it

upright ... You can style it by curling the hair with a curler and fixing it with mousse".

#### D. Consideration

As described above in A (B) and (C), as of the Day of Decision, the words "bangs" and "curler" are both indicated in a Japanese language dictionary that is acknowledged to be highly credible in Japan as having the meanings of the above A (B) and (C). Meanwhile, according to the entire import of oral argument, as of the Day of Decision, it is acknowledged as being quite clear that traders or consumers for the Goods (the traders or customers for the Goods as of the Day of Decision are hereinafter referred to as "Consumers, etc.") knew that these words have such meanings (upon considering the awareness of Consumers, etc. coming in contact with the Trademark, the words "bangs" and "curler" are used directly instead of using explanatory expressions like "hair that falls over one's forehead" and a "cylindrical tool used for curling hair by wrapping the hair around it" and the like.)

On the other hand, in light of the meaning and usage of the word "くるん" according to the dictionary (above A (A)), and examples of use of words such as "くるんと" (above B and C) on websites and in newspaper articles prior to the Day of Decision, as well as the Japanese language grammar, the word "くるんと" when used for bangs and other parts of hair, usually indicates a "state of (hair) having a rounded curve". In addition, in light of the examples of use of words such as "くるんと" on websites (above B), it cannot be acknowledged that the word "くるんと" and the word "くるんつと", have meanings that are different from one another due to the presence of a choked sound. In that case, the subject of the word "くるんつと", from among the constituent parts of the Trademark, positioned immediately preceding the word "前髪", is obvious even if there is no clear indication of a declinable word (verb, adjective, etc.) which, as an adverb, should modify "前髪". As such, it is reasonable to acknowledge that the word "くるんつと" is ordinarily recognized by Consumers, etc. as an indication of a "state of (bangs) having a rounded curve".

It should be noted that some of the examples of use of words such as "くるんと" on websites are acknowledged as using words such as "くるんと" as an adverb that indicates the manner of movement of rolling a

curler, which is a product, rather than to indicate a state of the hair having a rounded curve ([i] "It gives a rounded curve to the hair (above B (N))"); [ii] "Sandwiching the hair and giving it a rounded curve" (above B (O)); [iii] "Give it a rounded curve through super easy steps for an ideal style " (above B (Q)); [iv] "Simply sandwich the hair and give it a curve (above B (R))"). However, if the word "くるんつと" from among the composition of the Trademark is used to indicate a manner of movement of rolling a curler, said word merely expresses a natural movement made by a person using a curler, so that in regard to its applicability to Article 3, paragraph (1), item (iii) of the Trademark Act, the use is merely an indication of an intended purpose or method of use of goods in an ordinary manner, and the result of use of a curler by said movement is a state of the bangs having a rounded curve, so that there is no difference to the subject of recognition, as described above, by Consumers, etc. coming in contact with the Trademark (the recognition that the word "くるんつと" indicates a state of the bangs having a rounded curve).

Based on the above, even when taking into consideration the fact that, as of the Day of Decision, there is no evidence to sufficiently acknowledge that there are examples of use of the phrase "くるんつと前髪カーラー" or an equivalent phrase for the Goods, other than Defendant's goods (Exhibits Ko 14, 15-1, and 15-2, and Exhibits Ko 42 and 44) and Plaintiff's goods with the product name of "前髪くるんとカーラー" (Exhibit Otsu 2), it is reasonable to acknowledge that Consumers, etc. coming in contact with the phrase "くるんつと前髪カーラー" will ordinarily recognize said phrase as referring to a "curler for giving a rounded curve to bangs". According to evidence (Exhibits Ko 14, 15-1, and 15-2, and Exhibits Ko 42 and 44) and the entire import of oral argument, as of the Day of Decision, Defendant is acknowledged as using the phrases of "This will help you create curly bangs!" and "We came up with a curler for styling bangs by curling them inward", as an advertising statement for the quality and efficacy, etc. of Defendant's Goods. This coincides with the above finding that Consumers, etc. coming in contact with the phrase "くるんつと前髪カーラー" would recognize the phrase as referring to a "curler for creating bangs with a rounded curve" and the like.

#### E. Defendant's arguments

Defendant argues that while the word "くるんつと" from among

the composition of the Trademark is an adverb, the Trademark contains no verb, in the composition of the trademark, for clearly receiving the adverb, so that it is impossible to unambiguously identify what is meant by the Trademark.

Indeed, the onomatopoeic expression of "くるんっと" is, in terms of grammar, considered an adverb that modifies a declinable word (verb, adjective, etc.) Nevertheless, each of the words "前髪" and "カーラー" from among the composition of the Trademark is a noun, so that in the composition of the Trademark, there is no word which is modified by the word "くるんっと". However, it cannot be said that Consumers, etc. cannot unambiguously comprehend the meaning of the phrase, which consists of the words "くるんっと", "前髪", and "カーラー" when they are arranged in this order, unless the mutually modifying relationships of the words are grammatically accurate. In fact, examples of use of words such as "くるんと" on websites include an example using the phrase "How to make bangs curly!" (above B (I)), an example using the phrase "Curly" (above B (L)), and an example using the phrase "give it a rounded curve ... for an ideal style" (above B (Q)), and an example using the phrase "Curly bangs" (above B (R)). None of these examples is grammatically correct, but this does not suggest that the intended meaning is unclear.

Defendant argues that the phrase "くるんっと前髪カーラー" evokes various meanings, including: [i] "a curler for bangs whose 'surface is bouncy with a rounded curve'", [ii] "a curler for bangs that stay curled 'even when you turn around'"; [iii] "a curler that can curl bangs 'even when you roll over on your side'"; and [iv] "a curler for sandwiching bangs and 'turning it around'".

However, from the above, the meanings according to the above [i] to [iii] may be logically possible, but examples of use of the aforementioned websites and all other evidences submitted in the present case suggest that the word "くるんっと" as used together with "前髪" and "カーラー" is acknowledged as mostly indicating the "state of (bangs) having a rounded curve", and there is no example of use in the meaning asserted by Defendant. Furthermore, as for the meaning of the above [iv], while there are examples of use that generate such meaning (above B (N), (O), (Q), and (R)), when giving consideration to the explanation, said existence is not sufficient to influence the decision made about the

applicability to Article 3, paragraph (1), item (iii) of the Trademark Act.

In view of the above, Defendant's above arguments cannot be accepted.

(3) Applicability of the Trademark to Article 3, paragraph (1), item (iii) of the Trademark Act

As described above in (2), Customers, etc. coming in contact with the phrase "くるんっと前髪カーラー" will recognize said phrase as referring to a "curler for giving a rounded curve to bangs". Meanwhile, given that a "カーラー" is a "tool for wrapping hair around it to create curls" (above (2) A (C)), the phrase "くるんっと前髪カーラー" is merely a description of the efficacy, etc. of the Goods (Hair curlers [non-electric]). In addition, the Trademark consists solely of the phrase "くるんっと前髪カーラー" and shows said phrase in standard characters in a commonly used manner (it cannot be said that an expression using the word "くるんっと" which is made up of the word "くるんと" and a choked sound added thereto, is special). Accordingly, since it can be said that the Trademark is a trademark consisting solely of a mark which indicates the quality and efficacy, etc. of the Goods in a commonly used manner, the Trademark falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act.

Defendant argues that since it cannot be said that the Trademark directly and specifically indicates the quality, etc. of the Goods, the Trademark does not fall under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act. However, in light of the explanation given above in (2), the Trademark does not merely directly imply the quality or efficacy, etc. of the Goods, but is acknowledged as directly and specifically indicating such feature, so that Defendant's argument cannot be accepted.

In addition, Defendant argues that granting exclusive use to a specific person for the mark of "くるんっと前髪カーラー" does not cause any adverse effect. However, because "くるんっと前髪カーラー" is a mark which has meanings such as a "curler for giving a rounded curve to bangs" and indicates the quality and efficacy, etc. of the Goods in a commonly used manner, it is naturally assumed that other business operators, upon engaging in manufacture and sale, etc. of goods, which fall under the Goods, would try to use the same or similar mark as "くるんっと前髪カーラー". Accordingly, the court cannot accept Defendant's argument that there is no adverse effect to granting exclusive use for the mark of "くるんっと前髪カーラー".

(4) Summary

As described above, the Trademark falls under a trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act. As such, the JPO's Decision to the contrary is erroneous, and the Rescission Reason 1 has grounds.

2. Conclusion

In view of the above, Plaintiff's request has grounds and there is no need to consider other reasons for rescission.

Intellectual Property High Court, Second Division

Presiding judge: SHIMIZU Hibiku

Judge: ASAI Ken

Judge: KATSUMATA Kumiko