

Trademark Right	Date	December 19, 2023	Court	Osaka District Court, 21st Civil Division
	Case number	2022 (Wa) 9818		
- A case in which the exercise of the trademark right of the Plaintiff is denied by holding that it is a trademark registered in violation of Article 3, paragraph (1), item (iii) of the Trademark Act				

Summary of the Judgment

In this case, the Plaintiff alleged against the Defendant that the Defendant's act of selling or otherwise handling goods with the Defendant's mark "熱中対策応急キット (meaning first-aid kit for heatstroke)" infringed the Plaintiff's trademark right related to the Trademark of "熱中対策応急キット (meaning first-aid kit for heatstroke)" and claimed an injunction against the aforementioned sale, etc., deletion of the Defendant's mark from the goods, etc., and the payment of compensation for damage, etc.

In this judgment, the court held as follows concerning "whether there are grounds for invalidation of the Trademark based on Article 3, paragraph (1), item (iii) of the Trademark Act" from among the issues in this case, determined that the Trademark was registered in violation of said provisions and that the Plaintiff cannot exercise the trademark right, and dismissed all the Plaintiff's claims in this case.

The Trademark consists of the standard characters of "熱中対策応急キット" and the characters are in the same size and font and aligned with the same interval and in a cohesive form in a row. Therefore, they are understood by consumers, etc. to express a unified term with the entirety of these characters. In addition, the term "熱中" corresponds to two characters of "熱中" from among three characters "熱中症," by excluding the letter of "症," which means "症状 (symptoms)," and it is natural to consider that it indicates a part of the term "熱中症 (heatstroke)."

Looking at the actual transaction conditions, goods with the mark of "熱中対策応急キット" had been advertised and sold as a set of items for emergency countermeasures against heatstroke by many corporations by the date of examination for the registration. On the other hand, there are no facts showing that, based on the meaning of the term of "熱中" (meaning to focus on a matter, etc.), the goods used for the purpose of responding to this meaning were advertised and sold with the mark "熱中対策応急キット" or "熱中対策".

Based on the above together, it is found that the term "熱中対策" was also generally

understood in the meaning of "熱中症対策 (measures against heatstroke)" and that the term "熱中対策応急キット" was generally recognized to have the meaning of goods containing a set of items used as countermeasures or first-aid for heatstroke and items similar thereto as of the date of examination for the registration. If the Trademark of "熱中対策応急キット" was used for the designated goods, it was generally recognized by traders and consumers as an indication of the intended use of the goods. Therefore, the Trademark falls under Article 3, paragraph (1), item (iii) of the Trademark Act.