

Trademark Right	Date	November 4, 2020	Court	Intellectual Property High Court, Second Division
	Case number	2020 (Gyo-Ke) 10055		
<p>- A case in which, concerning Defendant's registered trademark, "織部流", the court held that the trademark is used for the services which are identical with or similar to the services for which Plaintiff's well-known trademark is used, and ruled that Defendant's registered trademark falls under Article 4, paragraph (1), item (x) of the Trademark Act.</p> <p>- A case in which, concerning Defendant's registered trademark, "織部流", the court ruled that the trademark does not fall under Article 4, paragraph (1), item (vii) of the Trademark Act.</p>				

Case type: Rescission of Trial Decision of Partial Invalidation

Result: Partially granted

References: Article 4, paragraph (1), item (x), and Article 4 paragraph (1), item (vii) of the Trademark Act

Related rights, etc.: Trademark Registration No.5986804

Decision of JPO: Invalidation Trial No. 2019-890032

### Summary of the Judgment

1. Plaintiff filed a request for a trial for invalidation of a trademark which is held by Defendant and which consists of the characters, "織部流" (designated services: "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of seminars; Providing electronic publications; Services of reference libraries for literature and documentary records; Book rental; Art exhibitions; Publication of books; Arranging, conducting or organization of chakai [tea gatherings]; Arranging, conducting or organization of entertainment events excluding movies, shows, plays, musical performances, sports, horse races, bicycle races, boat races and auto races" in Class 41; hereinafter referred to as "Trademark"). The JPO rendered a decision which invalidated the registration with regard to the services, "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]", from among the above designated services and which dismissed the request for a trial with regard to other designated services. The present case is a lawsuit seeking rescission of the part of the above decision which dismissed the request for a trial.
2. In the judgment of the present case, the court held as follows: [i] It is acknowledged that, at the time when an application for registration of the Trademark was filed, and at the time when the decision to grant registration was

issued, the Cited Trademark ("織部流"), which had not yet been registered and which represents a "school of sado [tea ceremony] founded by FURUTA Oribe", was well known, at least, as an indicator for the services pertaining to the business of Plaintiff with regard to the services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]", so that the Trademark and the Cited Trademark are the identical or similar trademarks; [ii] It is acknowledged that the service of "Arranging, conducting or organization of seminars" is identical with or similar to the service of "Sado instruction [tea ceremony instruction]", and that the service of "Arranging, conducting or organization of entertainment events" is identical with or similar to the service of "Arranging, conducting or organization of chakai [tea gatherings]"; [iii] It is acknowledged that, at the time when an application for registration of the Trademark was filed, and at the time when the decision to grant registration was issued, the Cited Trademark was also used for the services of "Services of reference libraries for literature and documentary records", "Book rental", and "Publication of books", and was well known as an indicator for the services pertaining to the business of Plaintiff with regard to these services; [iv] It is acknowledged that the service of "Providing electronic publications" is similar to the "Services of reference libraries for literature and documentary records" and the service of "Book rental"; and [v] It cannot be acknowledged that the Cited Trademark was used for the service of "Art exhibitions", and it also cannot be said that service of "Art exhibitions" is identical with or similar to the services of "Sado instruction [tea ceremony instruction]" and "Arranging, conducting or organization of chakai [tea gatherings]". In view of the above, the court ruled that the services of "Arranging, conducting or organization of seminars", "Providing electronic publications", "Services of reference libraries for literature and documentary records", "Book rental", "Publication of books", and "Arranging, conducting or organization of entertainment events" fall under Article 4, paragraph (1), item (x) of the Trademark Act, so that the registration of the Trademark should be invalidated with regard to these services as well.

On the other hand, in the judgment of the present case, the court held, concerning Article 4, paragraph (1), item (vii) of the Trademark Act, that while the Trademark should be invalidated with regard to the services that fall under Article 4, paragraph (1), item (x) of the same Act as described above, for the very reason of such applicability, there is no sufficient evidence, with regard to another designated service of "Art exhibitions", to sufficiently acknowledge that there are

circumstances based on which it can be said that there is an antisocial nature due to which registration of Trademark should not be granted.

Based on what is described above, in the judgment of the present case, the court rescinded the part of the JPO decision which dismissed the request for a trial with regard to the services other than "Art exhibitions".

Judgment rendered on November 4, 2020

2020 (Gyo-Ke) 10055 A case of seeking rescission of the JPO decision

Date of conclusion of oral argument: September 7, 2020

## Judgment

Plaintiff: X

Defendant: The Museum of Y

### Main text

1. Concerning the decision made by the JPO on March 19, 2020 for the Case of Invalidation Trial No. 2019-890032, the part, which dismissed the request for a trial with regard to the designated services of "Arranging, conducting or organization of seminars; Providing electronic publications; Services of reference libraries for literature and documentary records; Book rental; Publication of books; Arranging, conducting or organization of entertainment events excluding movies, shows, plays, musical performances, sports, horse races, bicycle races, boat races and auto races", shall be rescinded.
2. The rest of Plaintiff's claim shall be dismissed.
3. Court costs shall be divided into seven parts, one of which shall be borne by Plaintiff, with the rest being borne by Defendant.

### Facts and reasons

#### No. 1 Claim

Concerning the decision made by the JPO on March 19, 2020 for the Case of Invalidation Trial No. 2019-890032, the part, which dismissed the request for a trial with regard to the designated services of "Arranging, conducting or organization of seminars; Providing electronic publications; Services of reference libraries for literature and documentary records; Book rental; Art exhibitions; Publication of books; Arranging, conducting or organization of entertainment events excluding movies, shows, plays, musical performances, sports, horse races, bicycle races, boat races and auto races", shall be rescinded.

## No. 2 Outline of the case

The present case is a lawsuit filed against the decision made by the JPO for a case of trial for invalidation of trademark registration, seeking rescission of the part of the JPO's decision which dismissed the request for a trial with regard to some of the designated services. The issue is the applicability of Article 4, paragraph (1), item (x), and Article 4, paragraph (1), item (vii) of the Trademark Act.

### 1. The trademark of the present case

Defendant is the holder of the trademark right for the trademark indicated in the attached Description of Trademark (hereinafter referred to as "Trademark", and the designated services of the Trademark as indicated in the Description of Trademark under 6 shall be hereinafter referred to as "Designated Services") (Exhibit Ko 41).

### 2. Histories of procedures at the JPO

On May 24, 2019, Plaintiff filed a request for a trial seeking invalidation of the registration of the Trademark on the grounds that the Trademark is identical with a trademark which is written with the kanji characters, "織部流" [hereinafter sometimes referred to as "Oriberyu" or "Oriberyu school"], and which has the sound of "oriberyu" (hereinafter referred to as "Cited Trademark"; this is not a registered trademark), so that the Trademark falls under Article 4, paragraph (1), item (x), as well as under Article 4, paragraph (1), item (vii) of the Trademark Act (Invalidation Trial No. 2019-890032; hereinafter referred to as "Invalidation Trial"). On March 19, 2020, the JPO rendered a decision to the effect that, from among the Designated Services, "registration shall be invalidated for 'Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]' in Class 41, and the request for a trial is groundless with regard to other designated services" (hereinafter referred to as "JPO Decision"), and a certified copy of the decision was delivered to Plaintiff on the 27th of the same month.

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

#### (1) Well-knownness of the Cited Trademark

The name, "Oriberyu", refers to the "school of sado [tea ceremony] founded by FURUTA Oribe (hereinafter sometimes referred to as 'FURUTA Oribenokami', 'FURUTA Oribe Shigekatsu', and 'FURUTA Oribenokami Shigenari'), who was a disciple of Sennorikyu", and its chaho, or tea ceremony method, was passed on to Koshoji Temple in Kyoto (hereinafter referred to as

"Koshoji Temple").

It is acknowledged that, by 1985, if not earlier, Plaintiff had become the head family of Oriberyu school, which is one of the schools of sado and which still continues to exist, by taking into consideration the following circumstances; namely, in a book titled "Otemaeno Kenkyu", the family tree for the Oriberyu school indicates "18th Head, <X'>", and a book titled "Chanoyu Techo" indicates, in the column of "Oriberyu", "Current Head Family, 18<X'>" and "Current Head Family, <X'> <X'>", and an instructor's certificate (from January 2002 to June 11, 2013) is issued under the name of the head family, "Oriberyu Eighteenth Head <X'>", and the nameboard of the tea ceremony class shows the head family's name of "Oriberyu Eighteenth Head <X'>", and Plaintiff is the representative director of the religious corporation, Koshoji Temple school of the Rinzaishu sect (hereinafter referred to as "Koshoji School"), and <A>, who is the chief priest of Koshoji Temple, states that "the head family of the Oriberyu school has been, and still is, <X'>, and this fact remains unchanged", and Plaintiff, whose name is "<X'>" according to the family register, uses the name of "<X'>" or "<X'>" as the chief priest and head family.

In addition, it is acknowledged that the Cited Trademark had been well known among the customers related to tea ceremonies, by the time when an application for registration was filed for the Trademark and by the time when the registration was granted, as an indicator for the services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]" pertaining to the business of the claim, by taking into consideration the following circumstances; namely, an instructor of the Oriberyu school continuously held the position of a director for Kyoto Sado Dantai Konwakai, whose members include schools of sado such as Omotesenke, Urasenke, and Mushakojisenke, since 1975 and held the position of chairperson in 2016, an instructor of the Oriberyu school hosted tea gatherings held by Kyoto Sado Dantai Konwakai (from November 1997 until November 2014), an instructor of the Oriberyu school continuously held the position of a director for "Sado Bunkakai", whose members include masters of schools of sado such as Omotesenke, Urasenke, and Mushakojisenke and hold tea gatherings, since 1975 and held the position of the head director in 2017, an instructor of the Oriberyu school hosted tea gatherings held by Sado Bunkakai (from March 1975 until March 2012), an instructor of the Oriberyu

school performed soegama [an event in which tea is served at an exhibition of tea pottery] that was held at a department store in Tokyo three times in 2018, an instructor of the Oriberyu school hosted tea gatherings at events held in April 2005, November 2013, November 2016, and November 2018, and activities of the Oriberyu school were introduced in a public relations magazine issued by Hadano City (Kanagawa Prefecture) in October 1997, and in Chunichi Gifu Home News in November 2010, and in a public relations magazine issued by Motosu City (Gifu Prefecture) in December 2003 and June 2017.

(2) Defendant

It is acknowledged that Defendant is a museum which exhibits historical resources such as tea utensils which were favored by FURUTA Oribe, and that <B> (hereinafter referred to "Defendant's President <B>"), who is the president of Defendant, supervised FURUTA Oribe Exhibitions featuring the pottery and banquet utensils which were favored by Oribe and conducted lectures on FURUTA Oribe. However, it cannot be acknowledged as a fact that Defendant's President <B> provided services related to the school of sado of "Oriberyu".

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

- A. The Trademark and the Cited Trademark have the same pronunciation of "oriberyu", and have the identical or similar outer appearance. As for the concept, both trademarks generate the concept of a "school of sado founded by FURUTA Oribe". In that case, it should be said that the Trademark and the Cited Trademark are similar trademarks having a risk of causing confusion due to all of the outer appearance, pronunciation, and concept.
- B. The services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]" from among the Designated Services are identical with the services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]" in which the Cited Trademark is used.
- C. As described above in (1), it is acknowledged that the Cited Trademark had been well known among the customers related to tea ceremonies, by the time when an application for registration was filed for the Trademark and by the time when the registration was granted, as an indicator for the services of "Sado instruction [tea ceremony instruction]; Arranging,

conducting or organization of chakai [tea gatherings]" pertaining to the business of the claim.

D. Accordingly, the Trademark falls under Article 4, paragraph (1), item (x) of the Trademark Act with regard to the designated services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]".

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

Even if the Cited Trademark is well known among customers as an indicator for the services pertaining to the business of Plaintiff, no evidence can be found to support the argument that the Trademark is used for unfair purposes, such as by taking advantage of the credibility and fame of the Cited Trademark, or by diluting the Cited Trademark's goodwill and damaging the credibility and fame of the Cited Trademark.

Next, the constitution per se of the Trademark does not consist of letters which are unethical, obscene, discriminatory, radical, or give unfavorable impressions to others, and the use of the Trademark for its designated services is not against society and public interest as well as the socially accepted sense of morality, and the use of the Trademark does not insult any specific nation or its people and does not violate international fidelity due to the use thereof being prohibited by other laws or having a risk of damaging the authority or dignity of any other nation.

Furthermore, no evidence has been submitted to specifically indicate that the background to the filing of an application for registration of the trademark has a risk of being against public policy, for example, that the background to the filing of the application lacks social appropriateness and that granting registration would be against the order contemplated in the Trademark Act and can therefore never be approved.

Accordingly, the Trademark does not fall under Article 4, paragraph (1), item (vii) of the Trademark Act.

(5) As described above, the registration of the Trademark falls under Article 4, paragraph (1), item (x) of the Trademark Act with regard to the services of "Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of chakai [tea gatherings]" in Class 41 from among the Designated Services, so that registration should be invalidated pursuant to the provisions of Article 46, paragraph (1) of the same Act.

However, with regard to the remaining services of the Designated Services,



other than the aforementioned designated services (hereinafter collectively referred to as "Services Dismissed"), it cannot be said that they fall under either Article 4, paragraph (1), item (x) or Article 4, paragraph (1), item (vii) of the same Act, so that the registration of the Trademark in that regard should not be invalidated pursuant to Article 46, paragraph (1) of the same Act.

(omitted)

### No. 3 Judgment of this court

#### 1. Findings

According to the evidence indicated in parenthesis and the entire import of the oral argument, the following facts are acknowledged.

##### (1) The Oriberyu school as a school of sado

A. According to "Nihonno Chake" edited by <M>, et al. and published by Kawara Publishing Co., Ltd. (published on December 15, 1983; Exhibit Ko 1), there are the following descriptions under the subject "Oriberyu", which is authored by <F>.

(A) The founder, FURUTA Oribe, was a samurai warrior from Mino Province and served ODA Nobunaga and TOYOTOMI Hideyoshi, and was a tea ceremony instructor for Hideyoshi during his time as a taiko [the father of kanpaku (the principal adviser to the Emperor)] and for the Shogun family of TOKUGAWA. However, Oribe was ordered to perform seppuku [suicide by disembowelment] during the Summer Siege of Osaka, and his family was extinguished. The saho, or rules of behavior, which were adopted by the Oriberyu school were inherited by <N>, a step brother of Oribe, and were kept secret as they were passed on through generations of the FURUTA family. Later, <D>, who is the fourteenth head of the FURUTA family (Oriberyu Fourteenth Head) (hereinafter sometimes referred to as "Fourteenth Head <D>") made efforts to revitalize the tea ceremony of the Oriberyu school, and founded Sado Onchikai in 1898 to teach the true teachings of the founder to many disciples.

(B) The tea ceremony which has been passed on in the Oriberyu school consists of the two traditions called "Wabicha" and "Shikisei". The rules of behavior were passed down by the Fourteenth Head <D> to his biological children, <O>, <G>, and <P>, who were the only people to

be granted access to the secrets, and the Fourteenth Head <D> named <O> as the Fifteenth Head <O> of the Oriberyu school. <G>, who inherited both traditions from the Fourteenth Head <D>, published a book called "Tencha Kappo", and taught only the Wabicha tradition to his disciple, Q, who then passed on the tradition to R, S, and the Koshoji Temple. The Fourteenth Head <D> taught the Shikisei tradition to <P>, whose disciple, <T>, was named the Sixteenth Head (hereinafter sometimes referred to as "Sixteenth Head <T>") of the Oriberyu school by the Fifteenth Head <O>. The Sixteenth Head <T> taught the tea ceremony method to the chief priest of Koshoji Temple, <F>, making him the Seventeenth Head <F> of the Oriberyu school. The head family of the Oriberyu school at Koshoji Temple teaches both the Shikisei tradition and the Wabicha tradition, the former having been passed on by the Sixteenth Head <T>, and the latter having been passed on by G.

- (C) FURUTA Oribe learned the "Soannocha" [hereinafter also referred to as "Soancha" or "Soanchaho"], which is the Wabicha tradition of the Oriberyu school tea ceremony, from Sennorikyu. The "Oribe Hyakkajo", a book on tea written by FURUTA Oribe, has almost the same in content as "Rikyu Hyakkajo", and this fact is mentioned in publications such as a book on tea ceremony by Oribe's disciple, KOBORI Enshu. On the other hand, a book on the Shikisei tradition titled "Shoin Oyobi Hiromanocha" describes how the tradition was newly created by FURUTA Oribe, and a book on tea which was written by FURUTA Oribe and titled "Koori Kissaroku" describes how the spirit of Soannocha conveys the true intention of the Oriberyu school tea ceremony through the Shikisei tradition and the like. FURUTA Oribe's intentions are also described in publications such as a book on tea of the time titled "Sotan Nikki".
- (D) Koshoji Temple was founded by FURUTA Oribe in 1603 with <U>, who was the leading disciple of the highest rank priest named Tenkai, as the founding priest. In 1701, Koshoji Temple turned into the Rinzaishu sect and became the head temple of the Kunryu school by the name of the Kosei Zenji Temple, with several tens of branch temples under its control. At the beginning of the Showa period, thanks to the efforts made by <V>, a Zen master and chief priest at the Kosei Zenji

Temple, and <W>, the head of the time, kenchu [tea offering to Gods in shrines] was performed on June 11, which is the anniversary of the death of FURUTA Oribe, and this tradition has continued to this day. Incidentally, FURUTA Oribe and his wife and sons were buried in Koshoji Tempe.

- B. In a book written by <H> and titled, "Otemaeno Kenkyu Chanoyu 44-hano Hikakuto Bunseki" published by Ohsumi Shoten, Publishers (published on March 30, 2015; Exhibit Ko 2), in "Chapter 1 Target schools, and method for analyzing tea ceremony procedures", "Oriberyu (EO)" was categorized under the "E Group / Others" (in the case where the search was able to cover only up to two schools of the same lineage, this is the group into which the schools, which cannot be placed in a group of a lineage of a higher rank, are categorized) alongside other categories such as Senke, Uraku, and Nanbo, and there are the following descriptions about Oriberyu.

- (A) The Oriberyu school is a school founded by FURUTA Oribe, who was a disciple of Sennorikyu, and the Fourteenth Head was <D>, the Fifteenth Head was <O>, the Sixteenth Head was <T>, the Seventeenth Head was <F>, and the Eighteenth Head was <X'>.
- (B) The description about "Oriberyu" according to <F> (as described above in A) is slightly different from the image which is generally understood about FURUTA Oribe and the Oriberyu school.

Supplementary explanation on the ideas provided by the Oriberyu school about its school is provided below in documents such as "Oriberyu Tenchaho Sado Text Rekishihen", which is written by <I>. The Oriberyu school consists of the following three methods, namely; Soanchaho (Wabicha tradition learned from Sennorikyu), Kohoshikishochaho (which came from the Kogishikichaho in the Muromachi period which FURUTA Oribe learned from <C> upon becoming the tea ceremony instructor for TOKUGAWA Hidetada), and Shikiseichaho (also called "Shikiseichashikiho"; one which was created by <P> in recent times by improvement of Kohoshikiseichaho). The Eleventh Head, <A1>, combined and organized the teachings which were passed on in the FURUTA family with the Kooridenchagiho, which was inherited by way of sending <A2> to Fukuoka Domain in the Chikuzen Province, as well as with the teachings of FURUTA Oribe

which were passed on to Hagi Domain in Nagato Province and Awa Tokushima Domain, and established the "Kooriryu", which consists of Soanchaho and Kohoshikiseichaho. Later, the Fourteenth Head <D> founded Sado Onchikai in 1898, changed the name of "Kooriryu" to "Oriberyu", and taught it to the general public. The Fourteenth Head and his follower, <G>, organized and improved Soanchaho and Kohoshikiseichaho, which have become the teachings of Oriberyu school today. <P> devised Shikiseichaho from Kohoshikiseichaho, and T improved Shikiseichaho further and called it "Shikiseioriberyu". The reason why today's Oriberyu school includes Shikiseichaho is because it was adopted from Shikiseioriberyu. The Shikiseioriberyu which <T> started has been passed on through the head family which bears the name of <T>.

This book covered Soanchaho in its search because of the relevance to other schools. However, Shikiseichaho, whose style is to use small tables, is the one that is generally known by the name, Oriberyu, and this is why the process of how Soanchaho came about was also explained.

What is described above is the explanation provided by the Oriberyu school and is slightly different from the content indicated in a book titled "Ryuso FURUTA Oribenokami To Sono Sado" and authored by <T>. Also, it is said that there exist other head families of the Oriberyu school.

- C. According to the "Chanoyu Techo" which was published by Keisosha, in the version published in 1985 (Exhibit Ko 3-1) and the version published in 2006 (Exhibit Ko 3-2), the location of Koshoji Temple is written under the title, "Oriberyu", along with the family tree beginning with the First Head (FURUTA Oribe Shigekatsu), with the mention that the Seventeenth Head is "<F>", and the Eighteenth Head is "<X>".
- D. According to the "Chanoyu Techo", whose publishing office is Miyaobi Publishing Co., Ltd. (the publisher is Defendant's President <B>), in the version published in 2008 (first edition; Exhibit Ko 3-3), a school whose location is Koshoji Temple and whose Seventeenth Head is <F> and Eighteenth Head is "<X> <X'>" is indicated as "Oriberyu (Koorikai)", which is different from "Oriberyu", but in the version published in 2018 (Exhibit Ko 3-4), there is no longer any indication about the Oriberyu

school whose location is Koshoji Temple (Exhibit Ko 31).

(2) Activities by Oriberyu school as a school of sado

A. Activities related to Kyoto Sado Dantai Konwakai

(A) The Kyoto Sado Dantai Konwakai, which was founded in 1971, is a group consisting of the three Senke schools and other schools of sado. Since its foundation, <S>, a tea ceremony instructor of the Oriberyu school, has taken the position of a director and officer as a representative of the Oriberyu school. In addition, since 1975, <I>, who is likewise an instructor of the Oriberyu school, has taken positions of a director, head director, and chairperson as a representative of the Oriberyu school (Exhibit Ko 12-1).

(B) According to a publication titled "Chakai Kiroku" which was published by the Head Office of Kyoto Sado Dantai Konwakai (published around November 2016; republished on December 1, 2018; Exhibit Ko 12-1), it is indicated that <I>, and <L>, who is also an instructor of the Oriberyu school, hosted tea gatherings in the style of the Oriberyu school, and that tea gatherings were held at Koshoji Temple as follows; namely, No. 50 (April 29, 1996; hosted by <I>), No. 53 (November 3, 1997; Koshoji Temple; koicha [thick tea] hosted by <I>), No. 63 (November 3, 2002; usucha hosted by <L>), No. 67 (November 7, 2004; Koshoji Temple; koicha hosted by <I> and <L>), No. 69 (November 6, 2005; Koshoji Temple), No. 75 (November 3, 2008; Koshoji Temple; hosted by <I>), No. 78 (May 9, 2010; hosted by <I>), No. 80 (April 29, 2011; Koshoji Temple), and No. 87 (November 3, 2014; Koshoji Temple; a Buddhist memorial service tea ceremony for the 400th anniversary of the death of FURUTA Oribe; usucha hosted by <I>).

(C) "Kaiki", or records, of the above tea gatherings (Exhibit Ko 12-2 for No. 53, Exhibit Ko 12-3 for No. 63, Exhibit Ko 12-4 for No. 67, Exhibit Ko 12-5 for No. 75, Exhibit Ko 12-6 for No. 78, and Exhibit Ko 12-7 for No. 87) indicate the creators of the tea utensils, including kakemono [a hanging scroll of calligraphy displayed in the teahouse], kaki [flower vase], kogo [incense case], and chawan [tea bowl], as well as their styles and other features. In addition, "Kaiki" for No. 53 (Exhibit Ko 12-2) explain about occasions of sarei [tea drinking ritual] and describe, under the title of "November and Oribe's Utensils", the relationship

between November and green, which is the color suggested from Oribe's utensils, and "Kaiki" for No. 87 (Exhibit Ko 12-7) provide a simple explanation about the temae [tea serving method] of the Oriberyu school.

B. Activities related to Sado Bunkakai

(A) The Sado Bunkakai, which was founded in 1947, is an organization in which soshu [masters] of the three Senke schools and other schools of sado hold tea gatherings and the like. <I> has held the positions of a director and head director since 1975 (Exhibit Ko 13).

(B) According to a publication titled "Soritsu 70-shunen Kinen fiscal 2017 Sado Bunkakai Chakai Kiroku" (records of recollection of tea gatherings; published on March 1, 2017; publisher was <A3>, revisioner was <I>; Exhibit Ko 13), which is published by the Head Office of Sado Bunkakai, it is indicated that <S> and <I> hosted tea gatherings in the style of the Oriberyu school, and that tea gatherings were held at Koshoji Temple as follows; namely, No. 28 (June 11, 1949; Koshoji Temple), No. 52 (May 13, 1951; Koshoji Temple), No. 125 (June 9, 1957; Koshoji Temple), No. 242 (May 14, 1967; Koshoji Temple), No. 304 (November 15, 1972; Koshoji Temple), No. 320 (May 12, 1974; Koshoji Temple), No. 325 (October 13 of the same year; Koshoji Temple), No. 329 (March 9, 1975; hosted by <S>), No. 334 (August 17 of the same year; hosted by <S>), No. 336 (October 12 of the same year; Koshoji Temple), No. 343 (June 13, 1976; Koshoji Temple), No. 354 (June 12, 1977; Koshoji Temple; koicha hosted by <S>), No. 370 (November 12, 1978; Koshoji Temple), No. 379 (September 9, 1979; Koshoji Temple; hosted by <S>), No. 403 (November 15, 1981; Koshoji Temple), No. 414 (November 14, 1982; Koshoji Temple), No. 416 (February 13, 1983; Koshoji Temple), No. 425 (November 13 of the same year; Koshoji Temple), No. 441 (June 16, 1985; Koshoji Temple), No. 468 (June 12, 1988; Koshoji Temple; hosted by <I>), No. 489 (December 9, 1990; Koshoji Temple; hosted by <I>), No. 522 (September 18, 1994; hosted by <I>), No. 538 (April 21, 1996; Koshoji Temple; hosted by <I>), No. 545 (March 9, 1997; usucha [thin tea] hosted by <I>), No. 556 (June 14, 1998; koicha hosted by <I>), No. 652 (March 25, 2012; Koshoji Temple; maccha [ceremonial tea] hosted by <I>).

C. Annual events held at Koshoji Temple

Annual events which involve Oriberyu Koorikai and which were held at

Koshoji Temple between 2013 and 2019 include hatsugama [the first tea ceremony of the new year] / shinnenkai [annual event held at the beginning of the new year], kaizanki [the anniversary of the death of the temple's founder], oribeki [mourning of Oribe] (except for 2016 and 2017), and darumaki [mourning of Bodhidharma]. In addition, kucha [tea offering], hoyo [Buddhist memorial service], chakai [tea gathering], and the like were held as well as giving out of certificates and signboards for the Oriberyu school (Exhibits Ko 22-1 to Ko 22-7; Exhibits Ko 27, Ko 31).

D. Activities such as tea gatherings held by instructors of the Oriberyu school

- (A) <I> supervised the part related to tea ceremony in an episode (analogue broadcasting) titled "'Hyokin' Ni Inochigake Revolution of beauty by FURUTA Oribe, a busho [military commander] in the Sengoku period" in the series of a program titled "Rekishu Hiwa Historia" broadcasted by NHK, and provided materials in an episode (analogue broadcasting) titled "Sengokuno Yowo Chanoyude Ikinuke Busho, FURUTA Oribe" in the series of a program titled "Dodo Nihonshi", also broadcasted by NHK, and was introduced as a provider of materials having affiliation with Oriberyu school (Exhibits Ko 14, Ko 15).
- (B) <L> performed soegama at Keio Department Store Shinjuku on the following occasions; namely, at an exhibition for tea pottery which exhibited the works of <A4> and <A5> on March 17, 2018, and at an exhibition for tea pottery which exhibited the works of <A6> on July 14 of the same year, and at an exhibition for tea pottery which exhibited the works of <A7> on October 12 of the same year (Exhibits Ko 10, Ko 16-1, Ko 16-2). In addition, on November 18 of the same year, <L> hosted usucha at an event held in Sendai titled "No. 2 Tea Ceremony of Buke [samurai families] in Sendai Domain Oriberyu / Kobori Enshuryu / Sekishu Shimizuryu", which was organized by the Bukeno Chanoyuwo Tanoshimukai, as one of the participating schools (Exhibit Ko 16-3).
- (C) <A8>, who is an instructor of the Oriberyu school, was a member of the Hadano Sado Kyokai in Hadano City, Kanagawa Prefecture (hereinafter simply referred to as "Hadano City") in 1997, and the fact that he has affiliation with the Oriberyu school of Hadano Sado Kyokai

is indicated in a publication titled "Bunka Hadano", which was published on October 31 of the same year by the Hadano City Bunka Dantai Kyogikai (Exhibit Ko 17-1).

<A9>, who is an instructor of the Oriberyu school, held tea gatherings in Kanagawa Prefecture on 12 occasions between October 1975 and October 1998 (Exhibits Ko 17-2 to Ko 17-13).

<A10>, who is an instructor of the Oriberyu school, held tea gatherings in Hadano City on three occasions from March 2006 until October 2018 (Exhibits Ko 17-14 to Ko 17-16).

- (D) <A11>, who is an instructor of the Oriberyu school, founded "Oriberyu Midorinokai" in May 1999 in Motosu City, Gifu Prefecture (hereinafter simply referred to as "Motosu City"), which is said to be the birthplace of FURUTA Oribe, and since then, has held tea gatherings having affiliation with the Oriberyu school and has opened classes on tea ceremony mostly in Motosu City and in other parts of Gifu Prefecture as well as in surrounding prefectures. "Kaiki", or records, of these tea gatherings indicate the creators of the tea utensils, including hanging scrolls, flower vases, incense cases, and tea bowls, as well as their styles and other features (Exhibits Ko 19-2, Ko 19-5, Ko 19-6, Ko 19-8). In addition, <A11> hosted the "Oribe Ochakai", which was organized by Ceramics Park Mino Foundation and was held in Gifu Prefecture on April 22, 2005. "Kaiki", or records, of these tea gatherings indicate the creators of the tea utensils, including hanging scrolls, flower vases, incense cases, and tea bowls, as well as their styles and other features, and the materials providing information about the tea gathering include a document which indicates, in a simplified manner, the history of Oriberyu school under the title, "Oriberyu Sado Yonhyakunenno Gairyaku", with the name of <I> indicated at the end (Exhibit Ko 19-4). Activities by <A11> were introduced in "Chunichi Gifu Home News Hotaru Tsushin" (Exhibit Ko 19-2) on November 20, 2010. The article contained descriptions such as the following; namely, "Oriberyu Midorinokai is active in the area associated with FURUTA Oribe, and passes on the tea ceremony of the Oriberyu school", "What is attractive about the tea ceremony of the Oriberyu school, which is founded by FURUTA Oribenokami Shigenari?", and "Tea ceremony of Oriberyu school, founded by FURUTA Oribe, a



military commander in the Sengoku period, who was associated with Motosu City and was also a master of tea".

At the Sixth "Kensho Chakai", which was held at "Michinoeki Oribenosato Motosu" on May 6, 2017 by the tourist association of Motosu City to commemorate the achievement of FURUTA Oribe, people associated with the Oriberyu school performed tea ceremony procedures, and the event was introduced in a public relations magazine called "Koho Motosu" in June of the same year (Exhibit Ko 19-3).

The "Michinoeki Oribenosato Motosu" in Motosu City has the "Oribe Tenjikan", which exhibits materials related to FURUTA Oribe, Oribeyaki pottery, and tea ceremony, as well as densho (a manual passed down through generations) of the tea ceremony of the Oriberyu school, and the like (Exhibits Ko 19-2, Ko 19-3).

(E) On October 5, 2013, in Ogaki City, Gifu Prefecture, <A12>, who was an instructor of Oriberyu school, held a tea gathering that has affiliation with the Oriberyu school (Exhibit Ko 19-7).

(F) From October 20, 2003, Gifu Prefecture held "Oribe 2003 in NY" in New York, US, and as part of the event, people associated with the Oriberyu school, including <A11>, held a tea gathering having affiliation with the Oriberyu school at the "Oribe Jiyu Chakai", which took place at the Japan Society near the UN Headquarters on the 22nd of the same month (Exhibits Ko 20-1 to Ko 20-3).

In addition, Gifu Shimbun reported the news that in 2014, at a cherry blossom festival which was held to commemorate the 20th anniversary of friendship between Motosu City, Gifu Prefecture, and Echizen City, Fukui Prefecture, a tea gathering was held by the Gifu Branch (whose president is <A11>) of the Oriberyu school (Exhibit Ko 19-1).

E. Books about tea ceremony procedures, etc. written by instructors, etc. of Oriberyu school

(A) <G> authored a book titled "Kakuden Hikaku Tencha Kappo", whose content includes the family tree and tea ceremony procedures of the Oriberyu school, and the book was published in 1902 (Exhibits Ko 24, Ko 25).

(B) <I> authored a book titled "Sado Text Ichi" about the tea ceremony of the Oriberyu school, followed by a second textbook on the same

theme, titled "Oriberyu Tenchaho / Ni" (Exhibit Ko 35). The latter was written in light of the content of publications describing the tea ceremony founded by FURUTA Oribe, including the "Kakuden Hikaku Tencha Kappo" described above in (A), and was published by the Oriberyu Koorikai on November 11, 2008 (Exhibit Ko 35).

Later, <I> authored a fifth textbook on the Oriberyu school titled "Oriberyu Tenchaho" (Exhibit Ko 36 shows an abstract thereof), and its first edition was published by the Oriberyu Koorikai on July 11, 2015 as a privately published edition (Exhibit Ko 36).

In addition, <I> authored a book titled "Busho FURUTA Oribenokami Oriberyuno Rekishi" as a text on the historical aspect of the Oriberyu school, and the book was published on June 11, 2015 as a privately published edition (Exhibit Ko 37).

(3) Plaintiff and Defendant

A. (A) Since May 19, 1982, Plaintiff has held the position of the representative director for the religious corporation, Koshoji Temple school of the Rinzaishu sect (Exhibit Ko 23).

(B) Since January 2002, if not earlier, Plaintiff has given instructors' certificates and wooden signboards, which indicate a place for "teachings of Oriberyu tea ceremony" (Exhibits Ko 5-1 to Ko 5-3, Ko 6-1 to Ko 6-5), under the name of "<X">", who is the Eighteenth Head of Oriberyu school, to a plural number of persons by taking into consideration the articles of association of the Koorikai (Exhibit Ko 4). Incidentally, Plaintiff sometimes uses the names of "<X">" and <X'> for activities related to the Oriberyu school.

B. Defendant is a general incorporated foundation "whose purpose is to engage in businesses pertaining to the promotion and development of the tea ceremony culture and to honoring FURUTA Oribe, who was both a samurai warrior and master of tea, so as to aim at contributing to the furtherance of the interests of an unspecified, large number of people, and, to serve this purpose", Defendant's businesses include the following (Exhibit Ko 32):

(A) In relation to works of art / tea utensils / other cultural properties, [i] exhibition and utilization thereof, [ii] collection, storage, and repair thereof, and [iii] research and development thereof; and

(B) For the development and promotion of the tea ceremony culture, [i]

holding of tea ceremony performances, tea gatherings, and tea ceremony classes, and rental of tea rooms, [ii] research / investigation / construction / relocation / repair of tea rooms, [iii] utilization of villas and gardens, and [iv] holding of on-site tea gatherings.

2. Applicability of Article 4, paragraph (1), item (x) of the Trademark Act

(1) Well-knownness of the Cited Trademark

According to the findings described above in 1 (in particular, as described above in 1 (1) A to C, (2) A, B, D), it is acknowledged that by around 1985, if not earlier, the Cited Trademark, "織部流", was well known among customers, including tea ceremony devotees, as one which indicates a "school of sado founded by FURUTA Oribe" and whose Seventeenth Head was <F>.

Next, according to the findings described above in 1, (in particular, as described above in 1 (1) B to D, (2) A to D, (3) A), it is acknowledged that by the time when an application for registration was filed for the Trademark and by the time when the registration was granted, the Cited Trademark was well known among customers, including tea ceremony devotees, as one which indicates the services pertaining to the business of Plaintiff, at least with respect to the service of "Arranging, conducting or organization of chakai[tea gatherings]".

(2) Similarity between the Trademark and the Cited Trademark

The Trademark and the Cited Trademark both consist of the letters, "織部流", and they have the same pronunciation as well as the identical or similar outer appearance. As for the concept, both trademarks generate the concept of a "school of sado founded by FURUTA Oribe". Accordingly, it should be said that the Trademark and the Cited Trademark are similar trademarks.

(3) Services Dismissed

A. Arranging, conducting or organization of seminars

(A) The term, "seminar", refers to a "teaching method adopted at university" as well as "generally, a training session" ("Kojien Sixth Edition", Iwanami Shoten, Publishers, page 1582). A "Training" is "doing research about, or exercising academic matters / practical arts; providing instruction on the same" (same as above, page 942).

(B) As described above in (1), the Cited Trademark was well known as one which indicates the service of "Sado instruction [tea ceremony instruction]" pertaining to the business of Plaintiff. Since it can

sufficiently be considered that "Sado instruction [tea ceremony instruction]" may sometimes be conducted in the form of a "training session" according to the above (A), it is acknowledged that the service of "Arranging, conducting or organization of seminars" is similar to the service of "Sado instruction [tea ceremony instruction]". Regarding this point, although the scale and other matters are unclear, it is acknowledged that <A11> was giving tea ceremony classes having affiliation with the Oriberyu school (as described above in 1 (2) D (D)). Furthermore, generally speaking, it is a publicly known fact that many tea ceremony classes are held to provide tea ceremony instruction.

To the contrary, with regard to the service of "Arranging, conducting or organization of chakai [tea gatherings]", it is generally interpreted that the main purpose of a chakai, or a tea gathering, is to enjoy not only the tea itself but also the place of the tea gathering as well as the world view and culture represented therein, so that it cannot be said that such tea gathering falls under a "training session" as described above in (A). As such, it cannot be said that the service of "Arranging, conducting or organization of seminars" is identical with or similar to the service of "Arranging, conducting or organization of chakai [tea gatherings]".

B. Arranging, conducting or organization of entertainment events

- (A) The term, "entertainment event", refers to "the act of holding an event", "the act of instituting something; establishment", or "the act of gathering customers and holding events such as a play, music, sumo wrestling, movie, and show in exchange for entrance fees" (as described above, "Kojien Sixth Edition", Iwanami Shoten, Publishers, page 932).
- (B) Even in light of the point made in the above A (B), it cannot be acknowledged immediately that the service of "Arranging, conducting or organization of entertainment events" is immediately identical with or similar to the service of "Sado instruction [tea ceremony instruction]".

To the contrary, with regard to the service of "Arranging, conducting or organization of chakai [tea gatherings]", "chakai" can be considered as a type of "entertainment". Furthermore, from among the Designated Services, the service of "Arranging, conducting or organization of entertainment events excluding movies, shows, plays,

musical performances, sports, horse races, bicycle races, boat races and auto races" covers a wide range of "entertainment" that excludes those indicated in parentheses, and it can be said that the coverage includes not only tea gatherings but also other modes of "entertainment" related to tea ceremony. In that case, it is acknowledged that the service of "Arranging, conducting or organization of entertainment events" is identical with or similar to the service of "Arranging, conducting or organization of chakai [tea gatherings]".

C. Services of reference libraries for literature and documentary records; Book rental; Publication of books

- (A) The term, "services of reference libraries", refers to "the act of making available for viewing; the act of granting access to many people" (as described above, "Kojien Sixth Edition", Iwanami Shoten, Publishers, page 740), and the term, "viewing", refers to "the act of seeing or looking at a picture, acting, or scenery" (same as above, page 651).
- (B) According to the findings of the above 1 (in particular, as described above in 1 (1) A (B), B (B), (2) E), it is acknowledged that the head family and instructors of Oriberyu school created books, records, and other copyrighted works, and that it is presumed that, as the need arose, such copyrighted works were provided to third parties through rental or by way of "services of reference libraries" as described above in (A). Accordingly, at the time when an application for registration was filed for the Trademark and at the time when the registration was granted, it should be said that the Cited Trademark was being used for the services of "Services of reference libraries for literature and documentary records", "Book rental", and "Publication of books", and it is acknowledged that the Cited Trademark was well known as an indicator for the services pertaining to the business of Plaintiff with regard to these services.
- (C) Regarding this point, Defendant asserts that the "Publication of books" and the like as asserted by Plaintiff were merely performed as part of tea ceremony instruction or of dissemination activities. However, it cannot be said, even though there are such circumstances, that the Cited Trademark was not used in the service of publication of books and the like.

#### D. Providing electronic publications

As per the findings of the above C, it should be said that, at the time when an application for registration was filed for the Trademark and at the time when the registration was granted, the Cited Trademark was well known as an indicator for the services pertaining to the business of Plaintiff with regard to the services of "Services of reference libraries for literature and documentary records", "Book rental", and "Publication of books". As for the service of "Providing electronic publications", it should be said that it is similar to the services of "Services of reference libraries for literature and documentary records" and "Book rental".

#### E. Exhibition of artworks

(A) The term, "exhibition", refers to "the act of displaying items and works to be seen by the general public" (as described above, "Kojien Sixth Edition", Iwanami Shoten, Publishers, page 1944).

(B) Plaintiff asserts that sado, or tea ceremony, is a composite art form which joins together many parts of Japanese culture, and viewing of a hanging scroll, flower vase, incense case, tea bowl, and other utensils is a significant purpose of attending a tea gathering, so that the service of "Art exhibitions" is provided.

However, as per the findings of the above 1 (in particular, the above 1 (2) A (C), D (D)), it should be said that the events held by use of the Cited Trademark, "織部流", are merely tea gatherings and are different from "Art exhibitions". Accordingly, it cannot be said that Plaintiff provides the service of "Art exhibitions" with regard to the Cited Trademark, and it also cannot be said that the service of "Art exhibitions" is identical with or similar to the service of "Sado instruction [tea ceremony instruction]" or "Arranging, conducting or organization of chakai [tea gatherings]".

#### (4) Brief summary

Based on what is described above, at the time when an application for registration was filed for the Trademark and at the time when the registration was granted, the Cited Trademark was well known as an indicator for the services pertaining to the business of Plaintiff with regard to the services of "Services of reference libraries for literature and documentary records", "Book rental", and "Publication of books" from among the Services Dismissed. In addition, it is acknowledged that the service of "Arranging, conducting or

organization of seminars" is similar to Plaintiff's service of "Sado instruction [tea ceremony instruction]" pertaining to the Cited Trademark, and that the service of "Arranging, conducting or organization of entertainment events" is identical with or similar to Plaintiff's service of "Arranging, conducting or organization of chakai [tea gatherings]" pertaining to the Cited Trademark, and that the service of "Providing electronic publications" is similar to Plaintiff's services of "Services of reference libraries for literature and documentary records" and "Book rental" pertaining to the Cited Trademark. Accordingly, registration should be invalidated for the aforementioned services as well, from among the Services Dismissed of the Trademark, on the grounds of applicability to Article 4, paragraph (1), item (x) of the Trademark Act.

Incidentally, although Defendant makes an assertion as to the "codes for classification based on similarity", these codes, per se, are presumptions about similarity, and are the standards used by an examiner upon examination, so that the court is not bound by these codes. As such, these codes do not have any influence on the above determination.

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

(1) Each of the items of Article 4, paragraph (1) of the Trademark Act provides for a considerable number of types of trademarks which cannot be granted registration. As such, it is interpreted that the fact that item (vii) of the same paragraph provides for a trademark "which is likely to negatively affect public policy" as one of such types is premised on the possibility that are some trademarks which do not fall under other items but which still should not be granted registration, and is aimed at inserting a general clause so that such trademarks will not be granted registration. As such, application of item (vii) should be restricted to only the cases in which it can be acknowledged that the antisocial nature is such that registration of the trademark should not be permitted by society.

(2) As per the findings above, the Trademark falls under Article 4, paragraph (1), item (x) of the Trademark Act with regard to many of the designated services. Also, according to the evidence (Exhibits Ko 7, Ko 27, Ko 28) and the entire import of the oral argument, it is acknowledged that Defendant's President <B> had once joined the Oriberyu school in which Plaintiff is the head family. Accordingly, it is acknowledged that Defendant's President <B> was aware that there are grounds based on which the Trademark falls under Article 4, paragraph (1), item (x) of the Trademark Act.

However, with regard to the Trademark, the services which fall under Article 4, paragraph (1), item (x) of the Trademark Act should be invalidated for the reason of applicability, and there is no evidence to sufficiently acknowledge that there are circumstances based on which it should be said that there is an antisocial nature due to which registration of the Trademark should not be granted with regard to the remaining designated service of "Art exhibitions".

(3) Regarding this point, Plaintiff makes assertions such as that, although Defendant and Defendant's President <B> have no relationship with the FURUTA family or FURUTA Oribe, they are trying to monopolize the Oriberyu school as if it is a school of sado which they personally created, without any legitimate grounds or reasons for inheriting the traditions of Sado Oriberyu school, which were passed on over the centuries. However, as described above, the Trademark is invalid with regard to the services except for "Art exhibitions", so that Defendant will not be monopolizing Oriberyu school with regard to tea ceremony.

Concerning the above, Plaintiff asserts that when <L> was planning to hold a tea gathering of Oriberyu school, a letter dated October 26, 2018 and titled "Notice" (Exhibit Ko 21), requesting for discontinuation of the use of the name of "Oriberyu", was received. However, it is difficult to immediately acknowledge that <A13>, which is indicated as the sender of the letter, is Defendant or a person who was acting on the intentions of Defendant.

Furthermore, Plaintiff makes assertions as to the exhibitions and events associated with Defendant's President <B>, as well as to the same person's lectures and history, and the "Oribe Award", but these assertions do not have any influence on the determination described above in (2). As for the written statement by Defendant's President <B> (Exhibit Ko 28) from the time when an appeal was filed against the JPO Decision, it merely indicates the personal opinions of Defendant's President <B> during the examination, and does not have any influence on the determination described above in (2). As for the written statement by <K> (Exhibit Ko 40) which was submitted by Plaintiff and which indicates that <K> had been deceived by Defendant's President <B>, and the written statement bearing the same person's name (Exhibit Ko 29) which was submitted in the appeal filed against the JPO Decision, as well as what is written in the "Chanoyu Techo" (as described above in 1 (1) D) whose publisher is Defendant's President <B>, they are not sufficient to have any influence on the determination of the above (2), and there is also no other evidence to sufficiently acknowledge any circumstances based on which it should be said that there is an



antisocial nature due to which registration of the Trademark should not be permitted.

#### 4. Summary

Based on what is described above, concerning the JPO Decision, it is acknowledged that the reasons for rescission as asserted by Plaintiff are reasonable within the scope that Article 4, paragraph (1), item (x) of the Trademark Act does not apply to the services of "Arranging, conducting or organization of seminars", "Providing electronic publications", "Services of reference libraries for literature and documentary records", "Book rental", "Publication of books", " Arranging, conducting or organization of entertainment events excluding movies, shows, plays, musical performances, sports, horse races, bicycle races, boat races and auto races". The rest of Plaintiff's claim is groundless.

#### No. 4 Conclusion

Therefore, Plaintiff's claim shall be approved within the scope described above in No. 3-4, and the rest, being groundless, shall be dismissed, and the judgment shall be rendered in the form of the main text.

Intellectual Property High Court, Second Division

Presiding judge: MORI Yoshiyuki  
Judge: SANO Shin  
Judge: NAKAJIMA Tomohiro

(Attachment)

Description of Trademark

1. Registered trademark

織部流

- 2. Registration No.: 5986804
- 3. Date of application: July 26, 2016
- 4. Date of decision of registration: September 21, 2017
- 5. Date of registration: October 6, 2017

6. Designated services:

Class 41 Sado instruction [tea ceremony instruction]; Arranging, conducting or organization of seminars; Providing electronic publications; Services of reference libraries for literature and documentary records; Book rental; Art exhibitions; Publication of books; Arranging, conducting or organization of chakai [tea gatherings]; Arranging, conducting or organization of entertainment events excluding movies, shows, plays, musical performances, sports, horse races, bicycle races, boat races and auto races