

judgedate:

July 20, 1971

caseid:

1969 (A) 2117

casename:

Case of violation of the Trademark Act

casetitle:

Judgment regarding the establishment of a crime according to Article 37, item (ii) and Article 78 of the Trademark Act for the act of possession of goods affixed with a registered trademark on the packaging of designated goods, for the purpose of selling the same, in the case where the content is the trademark right holder's own product and, furthermore, where the content is new.

summary\_judge:

1. In the case of processing of goods, without legitimate authority, by affixing a registered trademark to the packaging of designated goods for the purpose of selling the same, the fact that the content is the trademark right holder's own product and, furthermore, that the content is new does not have any influence on the establishment of a crime according to Article 37, item (ii) and Article 78 of the Trademark Act.
2. Even if the packaging has no aesthetic element in particular, and even if it is mainly for protecting the goods for transportation, a cardboard box, as a container for the goods, falls under the "packaging of goods" as stipulated in Article 37, item (ii) of the Trademark Act.
3. It is not necessary for the act stipulated in Article 37, item (ii) of the Trademark Act to be always conducted as a business.

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Tokyo High Court, Judgment of September 22, 1969

references

Article 37, item (ii) of the Trademark Act, Article 78 of the Trademark Act

Main text

The final appeal shall be dismissed.

Reasons

From among the grounds for the final appeal according to Appellant's attorney, ●●●●, the point made about violation of Article 31 of the Constitution constitutes, in substance, entirely an assertion about a factual error or mere violation of law, and the point made about violation of a legal precedent concerns citing of a legal precedent which is not appropriate for the present case due to the subject covered, and other points of the gist of the argument concern assertions about factual errors, mere violation of law, and inappropriateness of sentencing, so that none of them constitutes lawful grounds for the final appeal (in the case of possession, without legitimate authority, of goods affixed with a registered trademark on the packaging for designated goods for the purpose of selling the same, if the content is the trademark right holder's own product and, furthermore, the content is new, such possession shall not have any influence on the establishment of a crime according to Article 37, item (ii) and Article 78 of the Trademark Act, and next, even if the packaging has no aesthetic element in particular, and even if the packaging is mainly for protecting the goods for transportation, a cardboard box, as a container for the product, constitutes the "packaging of goods" as stipulated in Article 37, item (ii) of the same Act, and it should not be considered necessary that the act stipulated in the same items of the same Article is always conducted as a business. Accordingly, the rulings made by the court of prior instance, whose purport is the same as the above, are entirely justified.)

Therefore, the judgment of this court is rendered unanimously by all judges, as per the main text, by application of Articles 414, and Article 386, paragraph (1), item (iii) of the Criminal Procedure Code.

July 20, 1971

Supreme Court, Third Petty Bench

Presiding judge: SEKINE Kosato  
Judge: SHIMOMURA Kazuo  
Judge: MATSUMOTO Masao  
Judge: AMANO Buichi