

judgedate:

April 10, 1979

caseid:

1978 (Gyo-Tsu) 129

casename:

A case of seeking recession of the JPO decision

casetitle:

Judgment regarding the trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act, and a trademark which is likely to be misleading as to features of goods.

summary_judge:

It is not necessary for the trademark listed in Article 3, paragraph (1), item (iii) of the Trademark Act to be one which, when used for goods, is likely to be misleading as to the place of origin, place of sale, and other features.

court second:

Tokyo High Court, Judgment of June 28, 1978

references:

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

Main text

The final appeal shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

Regarding Reasons 1 through 3 for the final appeal according to the attorneys representing Appellant, namely; ●●●●, ●●●●, ●●●●, and ●●●●.

Article 3, paragraph (1), item (iii) of the Trademark Act stipulates that the trademark listed therein lacks the requirements for trademark registration. This provision should be interpreted as follows: Such trademark consists of a mark indicating, in the case of goods, the place of origin, place of sale, and other features, and since any person would desire to use the same as a necessary and appropriate indication in a transaction, it is not appropriate, in light of public interest, to grant to a specific person the exclusive use of the trademark; and since such trademark consists of a commonly used mark, which lacks distinctiveness in many cases, the trademark fails to perform the function of a trademark. When a trademark, which is as described above, is used for goods, it is not infrequent for the trademark to be misleading as to the place of origin, place of sale, and other features of the goods. However, it must be said that this concerns the issue of whether or not such trademark falls under Article 4, paragraph (1), item (xvi) of the Trademark Act, and that this is not an issue that concerns Article 3, paragraph (1), item (iii) of the Trademark Act. In that case, there is no reason for interpreting, as per the asserted opinion, that a "trademark which consists solely of a mark indicating, in a common manner, the place of origin and place of sale for the goods", as stipulated in the above item (iii), means, restrictively, a trademark which consists solely of a mark indicating, in a common manner, the place of origin and place of sale, as they are widely known, for the goods and which is likely to be misleading as to the place of origin and place of sale when used for the goods.

In the trial of the prior instance, the court found and ruled that the Trademark, in relation to the designated goods, consists solely of a mark indicating, in a common manner, the place of origin and place of sale for the goods, and that the Trademark, when used for its designated goods, is likely to be misleading as to the place of origin and place of sale, and falls under the trademark listed in Article 3, paragraph (1), item (iii) and Article 4, paragraph (1), item (xvi) of the Trademark Act. This finding and ruling by the court can be approved as justifiable in light of the evidence listed and the explanation provided in the judgment in prior instance, and there is no illegality with the process, as stated in the asserted opinion. The gist of the argument cannot

be accepted.

Regarding Reason 4 for the final appeal.

The asserted opinion criticizes the judgment in prior instance based on the premise that if the Trademark is used for the designated goods, excluding perfume, there is no risk of the trademark being misleading as to the place of origin and place of sale for the goods. However, since the Trademark, when used for the above designated goods, is likely to be misleading as to the place of origin and place of sale for the goods, as described above, the finding and ruling by the judgment in prior instance are justifiable, and thus the asserted opinion is unreasonable due to the lack of its premise. The gist of the argument cannot be accepted.

Therefore, the judgment of this court is rendered unanimously by all judges, as per the main text, by application of Article 7 of the Administrative Case Litigation Act and Articles 401, 95, and 89 of the Code of Civil Procedure.

Supreme Court, Third Petty Bench

Presiding judge: YOKOI Daizo

Judge: ERIKUCHI Kiyoo

Judge: TAKATSUJI Masami

Judge: HATTORI Takaaki