

judgedate:

November 12, 1982

caseid:

1982 (Gyo-Tsu) 15

casename:

A case of seeking rescission of the JPO decision

casetitle:

Judgment regarding a company's trade name and Article 4, paragraph (1), item (viii) of the Trademark Act

summary_judge:

The part, which consists of a company's trade name minus the characters of "株式会社", constitutes an "abbreviation of another person's name" as stipulated in Article 4, paragraph (1), item (viii) of the Trademark Act, and a trademark containing such abbreviation cannot be granted trademark registration only when the abbreviation is "well known" as an indication of the company concerned.

court second:

Tokyo High Court, Judgment of November 5, 1981

references:

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

Main text

The final appeal shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

Regarding Reason No. 1 for the final appeal according to the attorneys representing Appellant, namely; ●●●●, ●●●●, ●●●●, ●●●●, and ●●●●.

A company's trade name constitutes a "name of another person" as stipulated in Article 4, paragraph (1), item (viii) of the Trademark Act, and the part which consists of a company's trade name minus the characters of "株式会社" [literally meaning "stock company", often affixed to a company name] should be interpreted as falling under an "abbreviation of another person's name" as stipulated in the same item. If an applied trademark contains an abbreviation consisting of the trade name of a company, which is another person, minus the characters of "株式会社", it is reasonable to interpret that the trademark cannot be granted registration only when the above abbreviation is "well known" as an indication for the company, which is another person. The trademark of "A", for which Appellee was granted registration, is the same as the part, which consists of Appellant's trade name, "株式会社 A", minus the characters of "株式会社", and is no other than a trademark consisting of an abbreviation of another person's name, so that it should be said that the only case in which Appellee cannot be granted registration for the trademark is limited to the case where "A" is well known as an indication for Appellant. The judgment of the court of prior instance, whose purport is the same as above, can be approved as justifiable, and there is no illegality with the process, as per the asserted opinion. The legal precedent from Daishin-in [the predecessor of the Supreme Court of Japan], which was cited in the asserted opinion, only goes so far as to stipulate that a "trademark containing another person's trade name" cannot be granted registration, and is a legal precedent which is based on the former Trademark Act (Act No. 99 of 1921) in which there was no provision as to a trademark containing an abbreviation of another person's trade name, so that the legal precedent is not appropriate for the present case. The gist of the argument cannot be accepted.

Regarding Reason No. 2 for the final appeal.

Under the fact situation which was lawfully confirmed in the trial of the prior instance, the judgment of the court of prior instance to the effect that "A" does not fall under a "well-known abbreviation of another person's name" as stipulated in Article 4, paragraph (1), item (viii) of the Trademark Act can be approved as justifiable, and

there is no illegality with the process as per the asserted opinion. The gist of the argument cannot be accepted.

Regarding Reasons No. 3 and No. 4 for the final appeal.

The judgment of the court of prior instance to the effect that the fact finding of the court of prior instance concerning the points of the asserted opinion can be sufficiently affirmed in light of the evidence listed in the judgment in prior instance and that, under the fact situation described above, it cannot be said that the Trademark was registered in violation of Article 4, paragraph (1), items (xv) and (xvi) of the Trademark Act, can be approved as justifiable, and there is no illegality with the process as per the asserted opinion. The gist of the argument cannot be accepted in either case.

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, Second Petty Bench

Presiding judge: KINOSHITA Tadayoshi

Judge: SHIONO Yasuyoshi

Judge: MIYAZAKI Goichi

Judge: OHASHI Susumu

Judge: MAKI Keiji