judgedate
January 23, 1986

caseid
1985 (Gyo-Tsu) 68

casename
A case of seeking rescission of the JPO decision

casetitle
Judgment regarding the meaning of a "trademark consisting solely of a mark indicating, in a common manner, in the case of goods, the place of origin or place of sale" as stipulated in Article 3, paragraph (1), item (iii) of the Trademark Act.

summary_judge
In order to consider that a trademark pertaining to an application for trademark registration falls under a "trademark consisting solely of a mark indicating, in a common manner, in the case of goods, the place of origin or place of sale" as stipulated in Article 3, paragraph (1), item (iii) of the Trademark Act, the designated goods do not necessarily have to be actually produced or sold in the land or place indicated by the trademark, and it is sufficient if consumers or traders recognize that the designated goods are likely produced or sold in the land or place indicated by the trademark.

court second
Tokyo High Court, Judgment of September 26, 1984

references
Article 3, paragraph (1), item (iii) of the Trademark Act

Main text

The final appeal of the present case shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

Regarding Reasons No. 1 through No. 3 for the final appeal according to Appellant's attorneys, ●●●●, ●●●●, ●●●●, and ●●●●.

In order to consider that a trademark pertaining to an application for trademark registration falls under a "trademark consisting solely of a mark indicating, in a common manner, in the case of goods, the place of origin or place of sale" as stipulated in Article 3, paragraph (1), item (iii) of the Trademark Act, the designated goods do not necessarily have to be actually produced or sold in the land or place indicated by the trademark, and it is sufficient if consumers or traders generally recognize that the designated goods are likely produced or sold in the land or place indicated by the trademark. Under the fact situation lawfully confirmed in the trial of the prior instance, it is acknowledged that consumers or traders coming in contact with the trademark, "GEORGIA", pertaining to the Application for trademark registration would generally recognize that the designated goods of coffee, coffee drinks, and the like, are produced in the land of Georgia in the USA, so that it should be said that the above trademark falls under the trademark stipulated in Article 3, paragraph (1), item (iii) of the Trademark Act. The judgment of the court of prior instance, whose purport is the same as the above, can be approved as justifiable, and there is no illegality with the process, as per the asserted opinion. The gist of the argument is merely one which, put plainly, argues that the judgment in prior instance is illegal from a perspective that is different from the above, and cannot be accepted.

Regarding Reason No. 4 for the final appeal.

In light of the evidence listed in the judgment in prior instance, the finding and judgment of the court of the prior instance pertaining to the points made in the asserted opinion can be approved as justifiable, and there is no illegality in the process, as per the asserted opinion. The gist of the argument is merely one which, put plainly, attacks the rejection or adoption of evidence, and the fact finding, which belong to the exclusive right of the court of the prior instance, and cannot be accepted.

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

Supreme Court, First Petty Bench

Presiding judge:	TSUNODA Reijiro
Judge:	WADA Seiichi
Judge:	TAKASHIMA Masuo
Judge:	OUCHI Tsuneo