

Part 16: Article 4(1) (xviii) (Three-Dimensional Shape Indispensable to Secure the Functions of the Goods or Their Packaging)

consists solely of a three-dimensional shape of goods or their packaging which is indispensable for such goods or their packaging to properly function; or

1. A judgment under the provision of this paragraph needs to be made based on a function produced from the shape of goods or its packaging indicated as a practical advantage of goods or its packaging in advertisements, business documents, etc. as stipulated in Article 3(2), with particular consideration given to the following:

- (a) Whether there is an alternative shape to secure that function.
- (b) Whether the shape of goods or its packaging can be achieved at the same (or lower) cost if it is replaced by an alternative shape.

(Note) Because a three-dimensional shape, if indispensable for such goods or their packaging to properly function, is nothing more than the shape of goods or its packaging, a trademark with such a shape falls under the provision of Article 3(1) (iii), in principle. Therefore, trademarks subject to the provision of this paragraph are, substantially, trademarks to which the provision of Article 3(2) applies.