

Chapter VII: Article 7-2
(Regionally based collective trademarks)

Part 1: Principle Paragraph of Article 7-2 (1)

Article 7-2

Any association established by a special Act, including a business cooperative (those which do not have juridical personality are excluded, and limited to those which are established by a special Act providing, without a just cause, that the association shall not refuse the enrollment of any person who is eligible to become a member or that the association shall not impose on any of its prospective members any condition that is heavier than those imposed on its existing members) or a foreign juridical person equivalent thereto (hereinafter referred to as an "Association, etc.") shall be entitled to obtain a regionally based collective) trademark registration with respect of any of the following, provided that the trademark is used by its members and, as a result of the use of the said trademark, the said trademark is well known among consumers as indicating the goods or services pertaining to the business of the applicant or its members, notwithstanding the provision of Article 3 (except a case falling under item (i) or (ii) of Article 3 (1)):

1. When judging whether an applicant qualifies as an "Association, etc." under the principle paragraph of Article 7-2, the key factors to consider will be as follows.

(1) The applicant has been registered as a juridical person which falls under "Association, etc."

(2) The basis law for the establishment of the "Association, etc." regulates that it may not restrict unreasonably the accession of those eligible for its membership.

2. If a trademark for which a regional collective trademark registration is sought has been used by the collective and is not intended to allow its members to use, such trademark may not be registered under the principle paragraph of Article 7-2.

This is not the case however where, even if the collective itself is using the trademark, it is guessed that the collective will allow its members to use the trademark.

3. It should be noted that a trademark must fulfill all of the requirements below to fall under "the trademark is used by its members and, as a result of the use of the said trademark, the said trademark is well known among consumers as indicating

the goods or services pertaining to the business of the applicant or its members,” in the principle paragraph of Article 7-2.

- (i) The applicant or its members are using the trademark in an application (see Item 5 below).
- (ii) The trademark in an application is well known among consumers (see Item 6 below).
- (iii) The trademark is well known among consumers as indicating the goods or services pertaining to the business of the applicant or its members

4. Where the members of a collective are using the trademark for which a regional collective trademark registration is sought, a judgment as to whether the trademark is “the trademark is used by its members” will be made with consideration given to whether or not the use of the trademark is carried out under the collective’s management.

5. Registration by applying the principle paragraph of Article 7-2(2) is only acceptable where the trademark in an application and the designated goods or designated services are identical to those in use.

Item 2 (2) and (3), Chapter II: Article 3(2) of the Guidelines shall apply *mutatis mutandis* to decisions as to the identity of trademarks.

6. (1) Although depending on individual situations, such as the kinds of goods or services, main consumers, and state of transaction activity, “well known among consumers” in the principle paragraph means that even if the trademark is not known among nationwide consumers, it requires to be known by certain scope of consumers, for example, consumers in the neighboring prefectures.

(2) Item 3, Chapter II: Article 3(2) of the Guidelines shall apply *mutatis mutandis* to the method for proving the well-knownness and decisions thereon concerning the principle paragraph of Article 7-2(2).

7. Where a trademark in an application does not fall under any Paragraph of Article 7-2(1) because the name of the region comprising the trademark does not fall under “the name of the region” under Article 7-2(2), such trademark may not be registered under the provision of the principle paragraph of Article 7-2(2).

8. For descriptions regarding the designated goods or designated services covered by a regional collective trademark, see Part 14: Article 4(1)(xvi), Chapter III of the Guidelines.