

## 41. 100. 05

### **Handling of an Application for Trademark Registration of Which Designated Goods or Services are Those Pertaining to the Business of a Person Who is Substantially Recognized to Be under Control of the Applicant**

Examination Guideline for Trademarks Chapter 1 Part 2 Principal Paragraph of Article 3(1)

**1. “Business of an Applicant”**

The “business of an applicant” shall include the business of the applicant himself/herself as well as the business of any person who is substantially recognized as being under control thereof.

(Examples)

- (i) Business of a stock company of which the majority of voting rights of all shareholders are owned by the applicant;
- (ii) Business of a company which has a capital alliance with the applicant and whose corporate activities are substantially under control of the applicant, although the requirement specified in (i) above is not satisfied.
- (iii) Business of an affiliated store (franchisee) if the applicant is a franchiser in a franchise agreement.

Whether the business of any person except the applicant is recognized as “Business of an Applicant”, shall be determined by the following criteria:

(1) If, a company is a stock company of which the majority of voting rights of all shareholders are owned by the applicant, the company shall fall under a person who is substantially recognized as being under control of the applicant.

In this case, the applicant shall submit a material indicating the shareholder composition being already publicly available (for example, a copy of Kaishya Shikihou), etc.

(2) If, (a) the business of a company which has a capital alliance with the applicant, although the requirement specified in (1) above is not satisfied, and (b) its corporate activities are substantially under control of the applicant, the company shall fall under a person who is substantially recognized as being under control of the applicant.

Regarding the above case (a), it shall be confirmed that 10% - 50% of the Issued Shares of the company are owned by the applicant.

Regarding the above case (b), for example, documents proving that the applicant dispatches an officer to the company or that the applicant constantly provides guidance on the business of the company, etc., (company's prospectus, catalogue, articles of association, pamphlet or (separate sheet) "explanation of situation on Business of an Applicant", etc.) shall be submitted.

(3) An affiliated store (franchisee) in a case where the applicant is a franchiser in a franchise agreement, shall fall under a person who is substantially recognized as being under control of the applicant.

If a franchiser files an application for the business to be conducted by a franchisee as a designated service, which is an affiliated store based on a franchise agreement, a trademark to be used for the said affiliated store may be deemed as a trademark used for “Business of an Applicant” of the applicant.

In this case, the applicant shall submit as evidence a copy of a document capable of proving that the applicant is a member of the franchise (for example, membership certificate of the franchise), etc.

(4) Cases where a business of a person who is substantially recognized as being under control of the applicant owing to any other circumstances may be recognized as “Business of an Applicant” of the applicant, are also included, but, each specific case should be decided separately and specifically based on the statement of submitted documents and limited to a case where a controlling interest equivalent to (1) - (3) may be recognized.

(Separate Sheet) Form of Explanation of Situation Concerning the Business of an Applicant

Explanation of Situation Concerning the Business of an Applicant

1. The relationship between B company that is a user of a trademark in documents, etc. relating to the use of the trademark, and A company that is an applicant of the trademark is as follows:

(i) A company that is the applicant has a capital alliance with B company where A company has ○○% of the issued shares of the B company.

(ii) A company provides a significant effect on sales operations and financial affairs of B company through relations such as human affairs, funds, technologies, and dealings.

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therefore, the business activities of B company is practically under control of A company, thereby, the relationship between both companies is substantially equivalent to that between a parent company and a subsidiary company.

2. Accordingly, A company that is an applicant shall file an application for a trademark pertaining to the application for trademark registration as a trademark for use of goods and services pertaining to the Business of an applicant

3. The above is affirmed to be true and correct in every particular respect.

MM, DD, YY (Heisei)

(A company) Address

Name

Name of a responsible person on this issue

(B company) Address

Name

Name of a responsible person on this issue

4. Attached documents Documents indicating the presence of capital alliance, etc. 1