

42.103.01

Interpretation of Article 4(1)(iii) and (v) of the Trademark Act

Article 4(1)(iii) of the Trademark Act shall be applicable even when the applicant is “the United Nations or any other international organization;” likewise, Article 4(1)(v) of the Trademark Act shall be applicable even when the applicant is “the government of Japan, the government of a country party to the Paris Convention, a member of the World Trade Organization or a contracting party to the Trademark Law Treaty.”

(Explanation)

1. Relation to the Paris Convention

Article 4(1)(i) through (vi) of the Trademark Act lists the grounds for unregistrability related to public interest. Of these, Article 4(1)(iii) and (v) of the Trademark Act were established in correspondence to Article 6ter(1)(a) and (b) of the Paris Convention. The purpose of these provisions of the Paris Convention is considered to be as follows: “with regard to armorial bearings, flags, other state emblems, etc. of the countries party to the Convention and armorial bearings, flags, other emblems, etc. of such international intergovernmental organizations of which one or more countries party to the Convention are members, the purpose of the provisions is to protect the rights and dignity of the countries party to the Paris Convention and the international intergovernmental organizations, which are administering the use of the symbols of authority of the state or organization, by exempting the symbols from becoming subject to industrial property under certain situations, rather than protecting them as subjects of industrial property.”

2. Relation between Article 4(1)(vi) and Article 4(2) of the Trademark Act

Under the current Trademark Act, Article 4(2) of the Act provides that only item (vi) of the grounds for unregistrability related to public interest (Article 4(1)(i) through (vi) of the Trademark Act) will not be applicable in cases where any of the parties mentioned in the respective item files the application. This is aimed at protecting the authority of public entities etc. as well as protecting famous marks of public projects, including those projects conducted by such public entities etc., as indications of source.

The above provisions are considered to have been established from the need to protect the general public, because there is a good possibility that the entities etc. themselves would use their trademarks for goods or services, and if the marks are used by another party for goods or services, consumers or vendors may become confused about the source of the goods or services.

3. Relation between Article 24-2 (transfer of trademark right) and Article 30 (rights of exclusive use) of the Trademark Act

Article 24-2 and Article 30 of the Trademark Act, which provide for the transfer of trademark

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rights and the granting of exclusive rights of use, impose restrictions on the trademark rights referred to in Article 4(2) of the Trademark Act from the viewpoint of maintaining public interest, and prohibit the assignment or granting of the exclusive rights of use of such trademarks as not conforming to the legislative purport of Article 4(2) of the Trademark Act.

Nevertheless, if trademark registration was approved for emblems, marks, etc. of the parties themselves referred to in Article 4(1)(i) through (v) of the Trademark Act, the assignment or the granting of the exclusive rights of use of trademarks would not be restricted under Article 24-2 and Article 30 of the Trademark Act as a matter of course, so the right owner would be able to transfer or grant the exclusive rights of use freely. This would not only be against the legislative purport of Article 4(1)(i) through (v) of the Trademark Act and Article 6ter of the Paris Convention, but may also mislead the general public about the source of goods or services for which the trademark in question is used.

By considering the above, it is appropriate to regard that, in cases where the State, an international organization, etc. files its sign, mark, etc. designated by the Minister of Economy, Trade and Industry, the sign, mark, etc. will not be subject to protection as industrial property.

Thus, this matter shall be handled as mentioned above.

References

[Examination Guidelines for Trademarks:](#)

Article 4(1)(ii), (iii) and (v) (State Coat of Arms and Other Emblems)

Article 4(1)(vi) (Famous Mark Indicating a State or a Local Public Entity)