

42.107.03

Handling of Marks related to Gangs (Gang Marks, etc.)

A trademark application for a trademark identical or similar to a mark used by a designated gang for identifying itself (gang mark, etc.) shall be handled as follows:

Provisions under Article 4(1)(vii) of the Trademark Act shall be applicable to a trademark application of a trademark identical or similar to a mark used by a designated gang for identifying itself (gang mark, etc.).

[Explanation]

1. Reasons

The purport of the Law Concerning Prevention of Unjust Acts by Organized Crime Groups (Boryokudan) (Act No. 77 of 1991) (hereinafter referred to as “the Anti-Boryokudan Law”), which went into effect on March 1, 1992, was to position gangs as antisocial groups, and to extend a strong legal force over them in order to prevent violent illegal acts, by designating specific gangs on the grounds that they are highly likely to encourage their members to conduct violent illegal acts frequently or in groups.

Those gangs designated under Article 3 of the Anti-Boryokudan Law (referred to as “designated gangs” in this handling procedure) are legally acknowledged as extremely malignant antisocial groups. Therefore, the gang members become subject to restriction in using the mark used by such a designated gang for identifying itself (referred to as the “mark (gang mark, etc.)” in this handling procedure). This is based on the grounds that the mark used by such a designated gang for identifying itself (gang mark, etc.) possesses an antisocial factor and has a threatening effect on the general public.

Therefore, when a trademark application of a trademark identical or similar to a mark used by a designated gang for identifying itself (gang mark, etc.) is filed, the mark will be considered as falling under a trademark liable to contravene public order or morality (Article 4(1)(vii) of the Trademark Act) due to the antisocial factor and the threatening effect on the general public inherent in the trademark, thus, all of such applications shall be refused.

2. Establishing grounds for refusal

(1) Specification of the mark (gang mark, etc.)

In the public disclosure of “designated gangs” in an official gazette, the names of the gangs would be published, but the marks used by designated gangs for identifying themselves (gang marks, etc.) would not be published. So, the JPO shall demand a formal notification concerning the specification etc. of a gang mark from the National Police Agency, and it shall use the mark (gang mark, etc.) described in that notification as the basis for specification.

[Note 1] Marks (gang marks, etc.) also include the names of designated gangs.

(2) Attribute of the applicant filing the trademark application

Since the “liability to contravene public order or morality” is judged separately from the attribute of the applicant, an application filed by a third party totally unrelated to gangs must also be handled in the same manner.

Thus, there is no discrimination in handling according to the attribute of the applicant filing the trademark application (whether the applicant is a person/company related to a gang or whether he/she is a totally unrelated third party, etc.).

(3) Content of the designated goods (designated services)

In this case, the trademark is deemed to be liable to contravene public order or morality because of the antisocial factor and the threatening effect on the general public attached to the trademark, and not because the use of the trademark for certain designated goods (designated services) is against public interest, etc. Thus, there is no discrimination in handling according to the content of the designated goods (designated services).

(4) Issue of whether the mark (gang mark, etc.) is well-known

When a trademark is refused because it falls under “a trademark liable to contravene public order or morality” in Article 4(1)(vii) of the Trademark Act, it can be considered that the mark acknowledged by the authority as a mark used by a designated gang for identifying itself (gang mark etc.) is liable to have a threatening effect, etc. on a considerable number of people, so there is no need to examine whether the mark is well-known or not.

[Note 2] From the viewpoint of preventing the actual filing of such applications, the JPO shall provide the same information to the Japan Patent Attorneys Association.

(Note) Click below to see the Examination Guidelines for Trademarks

Examination Guidelines for Trademarks:

[Article 4\(1\)\(vii\) \(Contravention of Public Order or Morality\)](#)