

42.107.05

Handling of Applications for Trademark Registration Filed for Marks with Historical, Cultural or Traditional Value

1. Current situation of marks with historical, cultural or traditional value and the basic concept thereof

There are numerous tangible and intangible cultural products, ancient sites and nature, etc. which have historical, cultural and traditional value¹ as valuable property inherited from our predecessors and are serving as the symbols of rich culture (hereinafter these are collectively referred to as "cultural products, etc.") around the world. These cultural products, etc. are not only important assets and resources for states but can also serve as one of the regional and tourism resources for the regions, and in fact, projects to boost the development of the regions using their names and appearances, etc. have actively been carried out.

However, no comprehensive and exhaustive provisions have been stipulated in the Trademark Act or in the Examination Guidelines for Trademarks for marks indicating the name or appearance, etc. of a cultural product, etc. using characters, figures or three-dimensional shapes (including the combination of these) or trademarks consisting of music (sound) among the cultural products, etc. (hereinafter these marks shall collectively be referred to as "marks indicating cultural products, etc.").² Given such situation, trademarks consisting of marks indicating cultural products, etc. should be examined from the public viewpoint of whether or not an exclusive right should be granted to them as trademarks.

In addition, marks indicating cultural products, etc. may not be recognized by consumers as indicating the source of the goods, etc. when they recognize them as indicating the quality of the goods etc. or a form of design or decoration used to improve the aesthetic sense or attractiveness of the goods, etc. in relation to the designated goods or designated services in light of the capacity to distinguish one's own goods from those of others. As such, marks indicating cultural products, etc. should also be examined from the viewpoint of whether they function as signs to distinguish one's own goods or services from those of others.

¹ See [Annex 3] for the world heritage, the memory of the world and the Act of Protection of Cultural Properties.

² Note that the application for trademark registration for marks consisting of the "name of a historical person (name of a well-known or famous deceased person)" is not included in marks indicating cultural products, etc. but is separately handled as prescribed in 42.107.04 of the Trademark Examination Manual from the viewpoint of preventing any inhibition of the performance of public measures, etc. in the relevant region.

As a result of the examination made from such viewpoints, applications for trademark registration filed for marks indicating cultural products, etc. shall be handled as follows.

2. Concrete operation policy

(1) Target cultural products, etc.

For example, the following types of cultural products, etc. prescribed in (a) to (d) below may be covered.

(a) Tangible cultural products, etc.

Building structures, paintings, sculptures, craft works, portable folding screens, hanging scrolls, penmanship, books, ancient writings, ceramics, textiles, handwriting, decorative signatures, artists' signatures and seals, battle flags, scriptures and others.

(b) Intangible cultural products, etc.

Drama, music, dance, industrial art, events and others.

(c) Scenic spots, etc.

Tumulus, castle ruins and other remains, gardens, bridges, gorges, seashores, mountains and other scenic spots

(d) Other cultural products, etc.

Family emblems, novels, haiku poems, tanka poems, senryu and others.

(2) Regarding the constitution and mode of trademarks consisting of marks indicating cultural products, etc.

(a) Trademarks consisting of marks indicating cultural products, etc.

With respect to the constitution and mode of trademarks consisting of marks indicating cultural products, etc., this handling will apply not only to marks that indicate the cultural products, etc. in whole but also to those that will be recognized as consisting of the constitutions and modes extracted from the major part of the cultural products, etc. (for example, part of a sculpture or one phrase of a novel) and to trademarks that include such marks indicating cultural products, etc. in part of their constitution and that will be recognized as indicating the relevant cultural products, etc.

(b) Marks indicating cultural products, etc.

This handling will be applied when marks indicating the appearances or names, etc. of the cultural products, etc. are found to be recognized in general as indicating a specific cultural product, etc.

* Marks indicating the appearance of the cultural product, etc. by figures, three-dimensional shapes or motion, etc.

(Example) A motion mark indicating the scene of a choreographer dancing

A figure mark indicating a castle

A three-dimensional mark indicating a festive float

* This handling applies even if the trademark indicates a cultural product, etc. by deforming it to a certain degree such as by drawing it in a manner of illustration instead of using photographs or computer graphics if the figure, etc. is recognized in general as indicating a specific cultural product, etc.

* Marks indicating the name, etc. of a cultural product, etc. by characters

(Example) A program of a drama

17 characters of a haiku poem

Song title of a music

In addition, even if the relevant trademark does not fall under the abovementioned examples, it will individually be examined concerning whether or not this handling applies by taking into consideration the intent of this handling.

In addition, with respect to marks for which separate handling is provided as mentioned in the [Reference] below, this handling will be referred to together with the [Reference].

[Reference]

- (i) Refer to Trademark Examination Manual 41.103.02 for the handling of trademarks indicating the "name, etc. of a building structure"
- (ii) Refer to Trademark Examination Manual 41.103.03 for cases where a cultural product, etc. which consists of a scenic spot such as a building structure, tumulus, remains such as a castle ruin or garden, etc. is recognized as a "geographical name" indicating a sightseeing area or a "geographical name" indicating the foundation place of a business operator, the shipment place and the temporary storage place of the designated goods, or the stop-off place when the designated service is provided.
- (iii) Refer to Trademark Examination Manual 42.17.06 and 42.107.07 for the handling of applications of trademark registration filed for a "family emblem" and "famous painting, etc."

(3) Applicable provisions

*** The examples set forth in the items of Articles 3 and 4 of the Trademark Act are mere examples of trademarks to which the items apply.**

(a) Article 3(1)(iii) of the Trademark Act

When a trademark consisting of a mark indicating a cultural product, etc. for which an application for trademark registration has been filed merely indicates the quality of goods or services, Article 3(1)(iii) of the Trademark Act will be applied.

The determination on whether or not this item applies will be made by taking into consideration the following facts in a comprehensive manner.

- (i) The degree of being well-known of the cultural product, etc.
- (ii) The relationship between the cultural product, etc. and the designated goods or designated services
- (iii) The actual state of transaction of the designated goods or designated services

(*) The degree of being well-known

In determining whether or not a cultural product, etc. is widely and generally known (including not only those that are known nationwide but also those that are widely known in a specific area), for example, the following facts will be taken into consideration in a comprehensive manner.

- Cultural products, etc. that are registered or designated, etc. by a public organization such as the inscription on the World Heritage List, registration as the memory of the world, designation as the national treasure or designation as cultural property will, in principle, be considered to be widely and generally known.

Cultural products, etc. which are registered or designated, etc. by public agencies such as the inscription on the World Heritage List have been maintained and managed to a respectable degree in the relevant state or region. In addition, in many cases, they are serving as important tourism resources by holding events related to the cultural product, etc. or developing the related region as a sightseeing area. Moreover, when an irrelevant third party registers the trademark related to a cultural product, etc., it is highly probable that citizens and local residents will be offended and eventually such registration be contrary to international faith and thus they will be handled in this manner.

- They are published on books and textbooks, etc.
- They are exhibited at museums and art museums, etc.
- They are introduced on TV or on the Internet, etc.
- The writer, author or composer's degree of being well known.

(Example) Cases to which this item applies

(i) "大般若長光 (characters)" (Goods "Swords, toy swords," Services "Exhibition of swords")

(Explanation) Since the sword named "大般若長光" is designated as a national treasure, it is determined to be widely and generally known. In addition, in relation to the goods, the characters would be recognized by consumers as indicating the name of a sword and thus they would be determined to be indicating the quality of goods or services.

(ii) "鑑真和上像 (characters)" (Goods "Wooden sculpture," Services "Exhibition of work of art")

(Explanation) Since "乾漆鑑真和上坐像 (The dry lacquer seated statue of the Buddhist Master Ganjin (in Chinese pinyin, Jianzhen))" is designated as a national treasure, it is determined to be widely and generally known. In addition, in relation to the goods, the characters would be recognized by consumers as indicating the name of a portrait, and thus they would be determined as indicating the quality of goods or services.

(iii) "白鳥の湖(characters)" (Services "Ballet performance")

(Explanation) Since "白鳥の湖(Swan Lake)" is apparently well known by consumers as indicating a ballet program in relation to the goods, it would be determined as indicating the quality of services.

(iv) "Pyramid of King Khufu (figures)" (Services "Travel arrangement")

(Explanation) Since the "Pyramid of King Khufu" is part of "Memphis and its Necropolis – the Pyramid Fields from Giza to Dahshur" which is registered as the world heritage, it is determined to be widely and generally known. In addition, in relation to the service, it would be recognized as indicating the destination of the trip by consumers and thus, it will be determined as indicating the quality of services.

(Example) Cases to which this item does not apply

"アンコーラワット(characters)" (Goods "Electric drill")

(Explanation) While "Angkor Wat" is widely and generally known as part of the Angkor monument registered as the world heritage, it would not be recognized as indicating the quality of goods by consumers in relation to the goods and thus it would be determined as capable of functioning as a sign distinguishing its own goods from those of others.

(b) Article 3(1)(vi) of the Trademark Act

Some marks indicating cultural products, etc. are used by being attached to goods or

packages of goods as designs or decorations by various persons.

For example, there are cases where marks indicating cultural products, etc. are used as a design or decoration for souvenirs and goods with weight on designs such as the labels of refined sake and wine, packages of confectioneries, mugs, T-shirts and towels. Consumers who look at such goods would only recognize the marks indicating cultural products, etc. which are attached to the goods as a mere type of design or decoration and would not recognize them as a sign to distinguish one's own goods or services from those of others.

Therefore, for example, when the filed trademark consists solely of a mark indicating a cultural product, etc. and will only be recognized as a form of design or decoration instead of being recognized as a sign to distinguish its source in relation to the designated goods or designated services, such trademark will be determined to be "a trademark by which consumers are not able to recognize the goods or services as those pertaining to a business of a particular person" (Article 3(1)(vi) of the Trademark Act).

In addition, this item also applies to trademarks consisting of the combination of such marks indicating a cultural product, etc. and characters which have no capacity to distinguish one's own goods or services from those of others if they are found to lack the capacity to distinguish their goods or services from those of others as a whole.

The determination on whether or not this item applies will be made by taking into consideration the following facts in a comprehensive manner.

- (i) The degree of being well-known of the cultural product, etc. (* for the degree of being well-known, see (a) above)
- (ii) Relationship between the cultural product, etc. and the designated goods or designated services
- (iii) Actual state of transactions of the designated goods or designated services

(Example) Cases to which this item applies

"紙本著色花下遊楽図 (Shihon Choshoku Kaka Yuraku (Merry-making under aronia blossoms)) (figures)" (Goods "Clothing" "Refined sake")

(Explanation) " 紙本著色花下遊楽図 (Shihon Choshoku Kaka Yuraku (Merry-making under aronia blossoms))" (drawn by Kano Naganobu/one of two six-section folding screens (lacking the second right-hand screen)) is designated as a national treasure and thus is determined to be widely and generally known. In addition, in the industry trading the goods "clothing," it is a general practice to use paintings as a design of goods while in the industry trading the goods "refined sake," it is a general practice to use paintings for the labels of goods or designs for packages

and thus, the trademark indicating the folding screen would be recognized by consumers as a form of designs of goods.

(Example) Cases to which this item does not apply

"東大寺金堂（大仏殿）(Todaiji Kondo (Daibutsuden) (Todaiji Temple Kondo Hall (Great Buddha Hall) (three-dimensional shape)" (Services "preparing medicine")

(Explanation) "Todaiji Temple Kondo Hall (Great Buddha Hall)" is registered as a world heritage and is widely and generally known, and thus consumers would by no means recognize the mark as the store at which the applicant offers the service or the shape of the applicant's business place.

(c) Article 4(1)(vi) of the Trademark Act

When the filed trademark consisting of a mark indicating a cultural product, etc. is identical or similar to a famous mark indicating non-profit public organizations such as shrines and temples that are religious corporations or educational organizations that are incorporated educational institutions, Article 4(1)(vi) of the Trademark Act will be applied.

(Example) Cases to which this item applies

"Westminster Palace and Westminster Abbey (characters)," "Todaiji Temple (three-dimensional shape)" and "Shrine crest of Kamo Shrine (figure of Asarum caulescens)"

(Explanation) These are marks indicating cultural products, etc. that are registered or designated by public organizations such as the registration as a world heritage, and thus are famous as a mark indicating a specific religious corporation.

(Example) Cases to which this item does not apply

"Statute of Takanori Ninomiya (three-dimensional shape)

(Explanation) Since this statute has been set up at many school yards of educational organizations, it cannot be found to be indicating a specific incorporated educational institution, etc.

(d) Article 4(1)(vii) of the Trademark Act

Many cultural products, etc. are found valuable, have attracted popularity by citizens and local residents and have strong attractions to consumers through being well known and famous.

In such case, if a third party who has no relationship with the cultural product, etc. files an application for the purpose of plagiarism and receives registration as trademark

with respect to a mark indicating a cultural product, etc., it may be contrary to the social and public interest, general sense of morality or international faith. Especially, when such filing and registration are likely to inhibit the performance of measures using the cultural product, etc. by public organizations such as the state or local governments or to go against international faith, or when the background to the filing and the intention of adopting the trademark lack social appropriateness, there would be harm to the fair competition system and the social interest would not be served, and thus Article 4(1)(vii) of the Trademark Act will be applied (see [Annex 2] for trial and appeal decisions which applied this item).

The determination on whether or not this item applies will be made by taking into consideration the circumstances set forth in (i) to (vii) below in a comprehensive manner. Especially, when the person who manages and owns the cultural product, etc. is the applicant, examination must be made by taking into consideration the circumstances set forth in (vi) below (see [Annex 1] for details of factors to be taken into consideration).

- (i) The degree of being well-known of the cultural product, etc. (* see (a) above for the degree of being well-known)
- (ii) Recognition of the cultural product, etc. by the citizen or local residents
- (iii) State of use of the cultural product, etc.
- (iv) Relationship between the state of use of the cultural product, etc. and the designated goods or designated services
- (v) Background, purpose and reason for filing an application
- (vi) Relationship between the cultural product, etc. and the applicant
- (vii) Characteristics of the person managing and owning the cultural product, etc.

[Note] Regarding the case where an application for trademark registration filed for the applicant's well-known or famous trademark (e.g. house mark) indicates or calls into mind a cultural product, etc.

When an application for trademark registration filed for the applicant's well-known or famous trademark (e.g. house mark) indicates or calls into mind a cultural product, etc., the applicant's lawful business activities may be disturbed if this item is uniformly applied to such application for trademark registration.

Therefore, the applicability of this item will be determined by taking into consideration the following factors: (a) the degree of similarity (i.e. to what extent the trademark calls into mind the cultural product, etc.); (b) the degree of being well-known

of the trademark; and (c) whether the designated goods or designated services are identical or similar to the goods or services for which the trademark is actually used by the applicant or whether the designated goods or designated services are related to such goods or services even if they are not identical or similar to them.

Part III, Chapter 13, Item 1(2) of the Examination Guidelines for Trademarks (Article 4(1)(xv)) applies mutatis mutandis to the factors to be taken into consideration in this case.

(Example 1) When a person who is using a famous trademark, "Sakurada Familiya," for the goods, "bags," files an application for trademark registration for the trademark, "Sakurada Familiya," determination will be made in the following manner.

(i) When the designated goods are "aircraft"

=>Taking into consideration the facts that the famous trademark, "Sakurada Familiya," and the name of the world heritage, "Sagrada Familia," are highly similar to each other and that the designated goods and the goods for which the trademark is actually used have no relevance, this item will be applied.

(ii) When the designated goods are "clothing"

=>In light of the fact that, while the famous trademark, "Sakurada Familiya," and the name of the world heritage, "Sagrada Familia," are highly similar, both the designated goods and the goods for which the trademark is actually used are goods related to fashion and are relevant, thus consumers would recognize the famous trademark from "Sakurada Familiya" instead of the world heritage. Taking these facts into consideration, this item will not be applied.

(Example 2) When a person using the famous trademark, "Sagrada Familia," for the goods, "bags," files an application for trademark registration for the trademark, "Sagrada Familia," determination will be made in the following manner.

(i) When the designated goods are "bags"

=>Taking into consideration the fact that while the famous trademark, "Sagrada Familia," is identical with the name of the world heritage, "Sagrada Familia," the designated goods and the goods for which the trademark is actually used are identical, thus this item will not be applied.

(ii) When the designated goods are "clothing"

=>Taking into consideration the facts that both the designated goods and the goods for which the trademark is actually used include goods related to fashion and are related and that the famous trademark, "Sagrada Familia," is identical with the

name of the world heritage, "Sagrada Familia," this item will be applied.

* "Sagrada Familia": A church located in Barcelona, Spain. One of the masterpieces of Gaudi. Its construction began in 1882 by the predecessor and Gaudi undertook the designing from the following year. It is still under construction today. It was registered as the world heritage (cultural heritage) in 2005 together with Gaudi's other works located in Barcelona and its environs as "Works of Antoni Gaudi." ("Digital Daijirin" Shogakukan Inc.)

(e) Article 4(1)(x), (xv) and (xix) of the Trademark Act

There are cases where marks indicating cultural products, etc. are used and well known among consumers as trademarks indicating the source of the goods or services of the person managing and owning the relevant cultural product, etc. In such case, the relevant trademark sufficiently has the capacity to attract consumers and the trademark itself has an economic value.

Therefore, when confusion as to the source of goods or services is likely to occur among consumers as a result of a third party filing an application for such trademark and receiving the registration thereof or when such filing is made for the purpose of defaming the trademark, it will be handled in the following manner.

- (i) When the filed trademark is identical with or similar to a trademark consisting of a mark indicating a cultural product, etc. which is used and well known among consumers as a trademark indicating the goods or services pertaining to the business of another person and is used for goods or services that are identical or similar to the first-mentioned goods or services, Article 4(1)(x) of the Trademark Act will be applied.
- (ii) When a person other than the person managing the relevant cultural product, etc. files an application for a mark indicating the cultural product, etc. or a trademark containing in its constitution a mark indicating the cultural product, etc., and such filing is likely to cause confusion with the goods or services pertaining to the business of the person managing or owning such cultural product, etc., Article 4(1)(xv) of the Trademark Act will be applied.
- (iii) When a mark indicating a cultural product, etc., which is a trademark identical with or similar to a trademark that is used and well known among consumers in and outside Japan as a trademark indicating the source of the goods or services pertaining to the business of another person, is used for unfair

purposes, Article 4(1)(xix) of the Trademark Act will be applied.

In this case, even if confusion as to the source of goods or services is unlikely to occur if the trademark is used by a third party, such use would dilute the trademark's function of indicating the source or defame the trademark.

Therefore, the abovementioned handling will be applied to protect trademarks indicating cultural products, etc. in a sufficient manner from the use of trademarks for unfair purposes as mentioned above.

Factors to be Taken into Consideration in Determining the Applicability of Article 4(1)(vii) of the Trademark Act

The applicability of this item will be determined by taking into consideration, for example, the following factors in a comprehensive manner.

Even if factors such as the degree of being well-known or the state of use of the cultural product, etc. itself are unclear, factors concerning the person related to the cultural product, etc. (writer, author, composer, etc.) such as the degree of being well-known or the state of use of the cultural product by such person shall be taken into consideration to infer the use of the cultural product, etc.

(i) The degree of being well-known of the cultural product, etc. (* With respect to the degree of being well-known, see item (a) of 2.(3) Applicable Provisions)

Some cultural products, etc. are registered or designated as the national treasure, world heritage or memory of the world. In addition, many of them are widely and generally known for circumstances such as their being often covered in the media. Such circumstances serve as important factors to presume the fame, reputation, degree of attraction of consumers and the recognition of the applicant (whether or not he/she was aware of the fame of the cultural product, etc. or was filing the application to take advantage of it) of the cultural product, etc.

(ii) Recognition of the citizens or local residents of the cultural product, etc.

The factors to be taken into consideration with respect to this item means the recognition of the citizens, etc. which is based on the perspective of how the citizens or local residents of the place in which the cultural product, etc. is located or the place which is famous in connection to the cultural product, etc. are regarding the cultural product, etc. For example, when the cultural product, etc. is recognized as a "common property" of the citizens or local residents as a whole for circumstances such as the cultural product, etc. being widely popular among the citizens or local residents or the cultural product, etc. being nationally protected, it would not be appropriate to grant an exclusive right to a single private citizen.

In addition, facts such as whether or not a third party irrelevant to the government, local government or the Chamber of Commerce and Industry has registered the trademark in the place in which the cultural product, etc. is located or the place which is famous in connection to the cultural product, etc. and the number of registrations would also serve as single pieces of information to determine the feelings of the citizens and local residents.

For example, when a mark indicating the cultural product, etc. is registered by a number of persons in a foreign country where the cultural product, etc. is located, it would be difficult to find that registration of the mark indicating the cultural product, etc. in Japan would instantly be contrary to international faith. Moreover, if a mark indicating a cultural product, etc. is used as a trademark in Japan and widely and generally recognized as a trademark or registered as a trademark, newly refusing or invalidating such registration could rather confuse the market and disturb the smooth performance of commercial transactions.

(iii) State of use of the cultural product, etc.

For example, circumstances such as the State, local government and public organizations such as the Chamber of Commerce and Industry holding festivals and events related to the cultural product, etc., running a museum or exhibition pavilion or providing tourist information for the cultural product, etc. or other circumstances such as many business operators using the cultural product, etc. under the promotion measures by such organizations will be taken into consideration.

(iv) Relation between the state of use of the cultural product, etc. and the designated goods or designated services

When the goods or services related to the use of the cultural product, etc. are identical with or similar to the designated goods or designated services or when they are highly related even if they are not similar to each other, a major impact could be caused to the use of the cultural product, etc.

For example, when a mark indicating a cultural product, etc. is a program of traditional dance and the service relating to the use is the "performance of dance," if the designated goods or designated services related to the application are "dancing shoes" or "dancing instruction," they are considered as highly related goods or services.

(v) Background, purpose and reason of filing an application

In relation to this item, whether or not the background that led the applicant to file an application for the trademark lacks social reasonableness will be taken into consideration.

For example, the filing of application would be considered to lack social reasonableness when the applicant filed an application knowing in advance that the cultural product, etc. would be used as the stage of a historical drama and thereby obtained a trademark right in advance or obtained the trademark right before the cultural product, etc. would be recommended for registration as the world heritage.

(vi) Relationship between the cultural product, etc. and the applicant

For example, the relationship between the cultural product, etc. and the applicant such as whether or not the applicant is managing or owning the cultural product, etc. or the relationship between the person using the cultural product, etc. as mentioned in (iii) above and the applicant will serve as the factor to examine whether or not the registration will be contrary to the social and public interest in addition to the purpose and background to the filing.

However, note that, even if the person managing or owning the cultural product, etc. is the applicant, if there are circumstances such that economic development projects or campaigns to revive the tourism industry in connection with the cultural product, etc. are implemented in the region in which the cultural product, etc. is located, there are cases where the social and public interest must be prioritized by taking into consideration such circumstances.

(vii) Characteristics of the person managing or owning the cultural product, etc.

Whether the person managing or owning the cultural product, etc. is a public organization such as the State or local government or a private citizen such as a private museum or individual will serve as the factor to examine whether or not the registration of the trademark is against the social and public interest. When the person managing or owning the cultural product, etc. is a public organization, it is highly likely that the cultural product, etc. is used or will be used in the future for public measures such as economic development projects in the region.

Meanwhile, this item will also be applied when applications filed for the purpose of plagiarism in relation to the interests between private citizens are found to be against the appropriate ethics of business due to lacking social reasonableness in the background to filing the application or disturbing the order of commercial transaction.³

³ It is difficult to find that courts have made uniform findings on the appropriateness of extending the application of this item to private areas (arrangement of private interests; applications filed for the purpose of plagiarism that are found to have been filed with unfair intention) in court decisions. However, in recent court decisions, courts have applied this item in the case where the applicant has proactively filed an application for unfair purposes ("Asrock Case" August 19, 2010, Intellectual Property High Court 2009(Gyo-Ke)10297) and the case where the applicant filed an application to gain unjust enrichment by using the opportunity of expiration of the term of the trademark right ("Noraya Case" April. 12 of 2016, Intellectual Property High Court 2015(Gyo-Ke)10023) and rescinded the trial or appeal decisions, and thus this handling will be applied.

Trial and Appeal Decisions in Which Article 4(1)(vii) was found applicable

1. Trademark "吉田の火祭り" / Designated goods Class 30 "Confectionery, bread and buns" and others
(Case No. Appeal Against Examiner's Decision of Refusal 2010-3810)

<Trial or appeal decision (summary)>

The filed trademark consists of the characters "吉田の火祭り" which represents a festival designated as the intangible folk cultural property of Yamanashi prefecture.

With respect to the "吉田の火祭り," any business operators active in the neighboring areas would want to use the mark "吉田の火祭り" for their goods when the festival is held or throughout the year. Thus, allowing a single individual to exclusively obtain an authority to use the name of such famous festival which is also an important tourism resource of the region will not only make it impossible or difficult for the competitors in the neighboring areas to use the mark "吉田の火祭り" but may also cause unnecessary confusion such as conflicts over the trademark right, and thus is inappropriate.

As such, allowing a single individual to exclusively use the filed trademark is likely to harm the order of fair competition and is contrary to social and public interest and thus Article 4(1)(vii) of the Trademark Act is applicable to the filed trademark.

2. Trademark "よっちゃんばれ踊り" (standard characters) / Designated goods: Class 29 "Fresh, chilled or frozen edible aquatic animals (not live)" and others
(Case Number: Appeal against Examiner's Decision of Refusal 2014-4360)

<Trial or appeal decision (summary)>

The filed trademark consists of the characters "よっちゃんばれ踊り." Allowing the applicant, who is a single private citizen, to exclusively adopt and use the trademark as its own trademark will not only make it impossible or difficult for the competitors in the neighboring area to use the trademark but will also inhibit the performance of public measures taken to revitalize the region or revive tourism using the name "よっちゃんばれ踊り" and thus is inappropriate.

As such, allowing a single individual to exclusively use the filed trademark is likely to harm the order of fair competition and is contrary to social and public interest and thus Article 4(1)(vii) of the Trademark Act is applicable to the filed trademark.

Accordingly, the filed trademark is "a trademark which is likely to cause damage to public policy" as prescribed in Article 4(1)(vii) of the Trademark Act.

(Supplement) Regarding World Heritages, Memory of the World and the Act on the Protection of Cultural Properties

Objects which have an "outstanding universal value" that should internationally be shared by humankind such as remains, scenic sites or nature are protected as the world heritage based on the World Heritage Convention (Convention Concerning the Protection of the World Cultural and Natural Heritage that was adopted in 1972 and came into effect in 1975) of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

In addition, in the project of the "Memory of the World" which was started in 1992 as one of the projects of UNESCO with an aim to raise awareness on globally important records and promote the preservation and access thereof, handwritten manuscripts, books, newspapers, posters, drawings, maps, music, films and photographs are registered internationally or locally.

In addition, in Japan, cultural products created by cultural activities of humankind such as building structures, paintings, sculptures and craft works that have high historical or artistic values are defined as cultural property and protected by laws and regulations. For example, the Act on the Protection of Cultural Properties (Act No. 214 of May 30, 1950) provides its purpose as "to seek preservation and the utilization of cultural property, thereby contributing to the cultural improvement of the citizens as well as to the progress of world culture" (Article 1 of that Act) and is defining the cultural properties themselves as the subject of preservation and protection.

In addition, the definition of "cultural properties" that are subject to protection by the State in the Act on the Protection of Cultural Properties is as follows.

- (i) Tangible cultural properties: Building structures, paintings, sculptures, craft works, penmanship, books, ancient writings and other cultural properties that have high historical or artistic value in Japan as well as archaeological material and other historical material with high scientific value
- (ii) Intangible cultural properties: Drama, music, industrial art and other intangible cultural properties that have high historical or artistic value in Japan
- (iii) Folk cultural properties: Manners and customs related to clothing, food and housing, occupation, faith or annual events, folk performing act, folk art as well as clothing, apparatus, house and other articles used for them that are indispensable for understanding the transition of the lives of Japanese citizens.
- (iv) Monuments: Shell mounds, tumulus, sites of palaces, sites of forts or castles, monumental dwelling houses and other ruins that have high historical or scientific value in Japan, gardens, bridges, gorges, seashores, mountains and

other scenic spots that have high artistic or ornamental values in Japan as well as animals, plants and geological features and minerals that have high scientific value in Japan

- (v) Cultural scenic spots: Scenic spots formed by the lives or occupations of people in the area or the climate of the area which are indispensable for understanding the lives or occupation of Japanese citizens
- (vi) Traditional building structures: Traditional building structures forming a historic environment together with the surrounding environment that have high value

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

Examination Guidelines for Trademarks:

Article 3(1)(iii) (Indication of origin, place of sale, quality and other characteristics of the goods, or indication of location, quality and other characteristics of provision of the services)

Article 3(1)(vi) (Trademarks lacking distinctiveness in addition to those mentioned in each of the preceding items)

Article 4(1)(vi) (Famous mark indicating a state or a local public entity)

Article 4(1)(vii) (Contravention of public order or morality)

Article 4(1)(x) (Well-known trademark of another person)

Article 4(1)(xv) (Confusion over the source of goods and services)

Article 4(1)(xix) (Trademark identical with or similar to another person's well-known trademark which is used by the applicant for an unfair intention)