

49.03

Determining Similarity of Three-Dimensional Trademarks Relating to Three-Dimensional Shapes of the Outer Appearance or the Interior of a Store, etc.

Examination on similarity of three-dimensional trademarks relating to three-dimensional shapes of the outer appearance or the interior of a store, office, place of business, or facility (hereinafter referred to as a "store, etc.") is to be as follows.

While the method for determination of similarity of three-dimensional trademarks is mentioned in the Examination Guidelines for Trademarks (Part III, Chapter 10, Item 1, Item 3(1), Item 5, etc. [Article 4(1)(xi)] of the Examination Guidelines for Trademarks), in determining the similarity of three-dimensional trademarks, their special nature of presenting a different appearance when seen from a different angle is particularly taken into consideration. Therefore, a three-dimensional trademark is judged, in principle, as similar in appearance to a plane trademark indicating an appearance (including a similar one) which it presents when viewed from a specific angle or to a three-dimensional trademark that is common (or similar) in appearance as viewed from a specific angle (however, this does not apply in the case where a three-dimensional trademark is not recognized as presenting a specific appearance characterizing the trademark, when viewed from a specific angle).

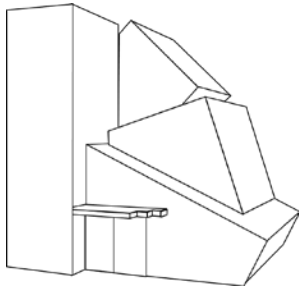
The same determination standard is used for a trademark relating to a three-dimensional shape of the outer appearance or the interior of a store, etc., as there is no reason to make a different determination from a three-dimensional trademark relating to the shape of goods (including the shape of packaging of goods).

Meanwhile, for example, in the case of a three-dimensional trademark comprised of multiple three-dimensional shapes, such as the interior, there may be cases where a part of its composition has distinctiveness by itself. In such case, that part may function to indicate a source depending on the mode of use.

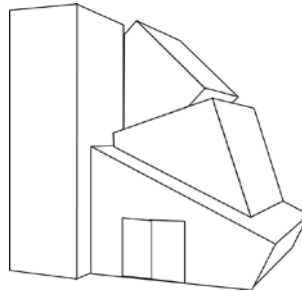
Therefore, in the case of a three-dimensional trademark comprised of multiple three-dimensional shapes, there are cases where judgment on the similarity is not only made by making an overall observation, but also by comparing a part of the composition of the trademark with another person's trademark, if any part of the composition of the trademark is a three-dimensional shape that independently demonstrates distinctiveness.

[Specific examples] Examples in which a trademark in an application and a registered trademark are judged to be similar

(Note) The registered trademarks below, other than those to which characters are added, are assumed to have been registered pursuant to Article 3(2) of the Trademark Act.

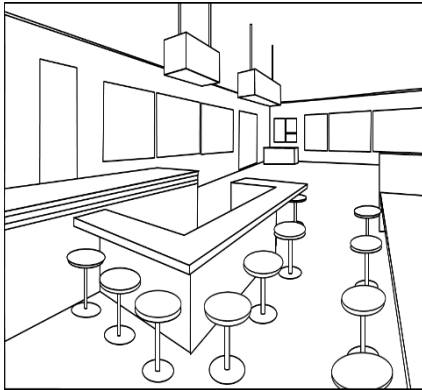


Trademark in an application

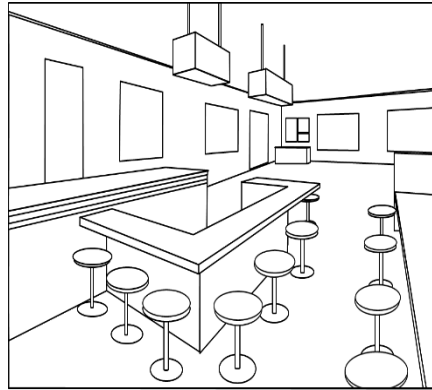


Registered trademark

(Note) There are differences in the position of the door and the presence of a canopy, but they are not found to give different impressions in appearance, so they are judged to be similar.



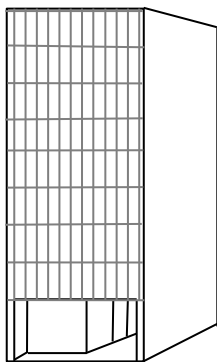
Trademark in an application



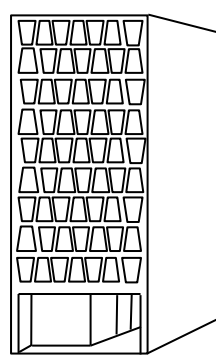
Registered trademark

(Note) There are differences in the number and the shape of windows, but they are not found to give different impressions in appearance, so they are judged to be similar.

[Specific examples] Examples in which a trademark in an application and a registered trademark are judged not to be similar

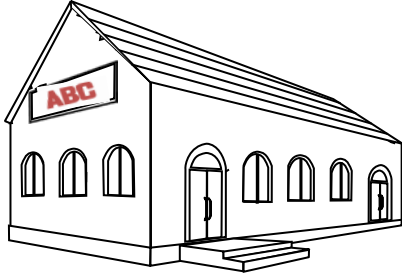


Trademark in an application



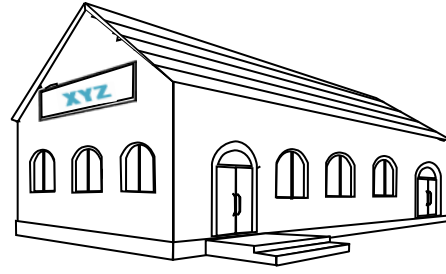
Registered trademark

(Note) Due to differences in the shape of windows, they give different impressions in appearance and are judged not to be similar.



Trademark in an application

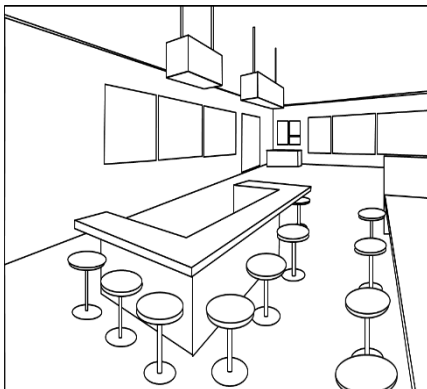
Designated services: Class 43 Providing foods and beverages



Registered trademark

Designated services: Class 43 Providing foods and beverages

(Note) The shapes of the two trademarks are identical, but the shapes themselves lack distinctiveness in relation to the designated services. Meanwhile, the two trademarks contain characters, etc. that have distinctiveness, and if those characters, etc. are not similar, the trademarks are judged not to be similar.



Trademark in an application



Registered trademark

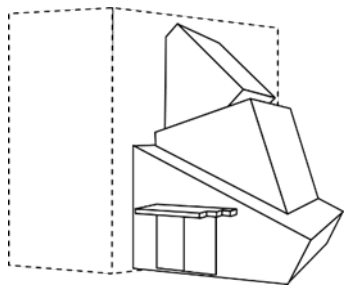
(Note) The two trademarks considerably differ in terms of the shape of the table at the central part, the shape of the lighting apparatuses, and the presence or absence of a table for providing food, etc. and a door. As their impressions in appearance differ, they are judged not to be similar.

Determination of similarity of trademarks in the case where the trademark in an application (or the registered trademark) has broken lines, etc. indicating a part that does not constitute the trademark

As mentioned in the Examination Guidelines for Trademarks, when whether a three-dimensional trademark, which is stated by a method such as drawing the mark in connection with the trademark with solid lines and other parts with broken lines (hereinafter referred to as "(having) parts drawn differently with solid lines/broken lines, etc."), is similar to another trademark is to be judged, the trademark must be examined as a whole while excluding those other parts (Part III, Chapter 10, Item 5(2) [Article 4(1)(xi)] of the Examination Guidelines for Trademarks).

Therefore, if the trademark in an application (or the registered trademark) has parts drawn differently with solid lines/broken lines, etc., the part that does not constitute the trademark as indicated by the broken lines, etc. is not taken into consideration, and a comparison is made between the part that constitutes the trademark in the trademark in an application and that in the registered trademark.

[Specific example] Example in which a trademark in an application and a registered trademark are judged to be similar



Trademark in an application



Registered trademark