

## 85.01

### **"Trademarks that are Likely to Cause Damage to Public order or morality" and "Designated Goods or Designated Services that are Likely to Cause Damage to Public order or morality" Associated with Publication of Unexamined Applications**

Trademarks that are provided in the proviso to Article 12-2(2) of the Trademark Act, that are also recognized as both "trademark[s] stated in the written application" and "designated goods or designated services" which, if published in the Trademark Gazette, are likely to cause damage to public order or morality, are those falling under the following conditions.

#### 1. Trademarks that are likely to cause damage to public order or morality

When a filed trademark is composed of the following, either in whole or in part, according to general standards, the trademark is handled as a trademark which is likely to cause damage to public order or morality.

- (i) Trademark that is indecent, drastic or obscene;
- (ii) Trademark that is defamatory to a specific person;
- (iii) Trademark that is against international faith: for example, one insulting a specific nation or its people;
- (iv) Trademark that is recognized to be anti-social in the light of moral sense in general society.

#### 2. Designated goods or designated services that are likely to cause damage to public order or morality

When the designated goods or designated services are those described below, they are handled as being likely to cause damage to public order or morality.

- (i) The designated good is apparently intended to commit crimes, or the offering of the designated service apparently causes crimes to be committed;
- (ii) The indication of the designated goods or the designated services consists of or includes words which are likely to cause damage to public order or morality.

The words which are likely to cause damage to public order or morality are those indicating the description or a registered trademark falling under (i) to (iv) of Item 1. above (limited to cases in which it is clear that the registered trademark is an indication in consideration of the whole indication of the designated goods and/or services.)

#### [Explanation]

The system of publication of applications is intended to publish information on an

application for trademark registration by publishing the content that is actually being stated in an application for trademark registration in the trademark gazette which is an official publication of the JPO, promptly after the application. Therefore, in principle, the content of an application must be published in a publication of unexamined applications. However, trademarks and designated goods or designated services which are likely to cause damage to public order or morality are not to be published (proviso to Article 12-2(2) of the Trademark Act).

In other words, it is understood that, under consideration of the purport of the system of publishing applications, trademarks and designated goods and designated services which have been filed but are not to be published in the publication of unexamined applications are limited to cases in which their publications in the bulletin are likely to cause damage to public order or morality (the publication of the bulletin does not generate any legal effect).

Considering the above purport, the JPO shall decide how to handle trademarks and designated goods and designated services which are likely to cause damage to public order or morality.

(1) Trademarks which are likely to cause damage to public order or morality

Considering the above purport, it shall be decided whether or not a trademark is likely to cause damage to public order or morality according to the composition and form of the trademark. The trademarks of which publication is "likely to cause damage to public order or morality" mentioned here should specifically refer to trademarks that are recognized to be anti-social in light of the moral sense of the general public, such as drastic characters, obscene drawings or anti-social characters which may destroy the fundamental order of a State, falling under "obscene document, drawing" provided in Article 175 of the Penal Code of Japan).

Therefore, even if a trademark's use is likely to cause damage to public order or morality or even if a trademark falls under Article 4(1)(vii) of the Trademark Act, the trademark does not fall under trademarks which are "likely to cause damage to public order or morality" provided in the proviso to Article 12-2(2) of the Trademark Act when the composition and form per se of the trademark are not likely to cause damage to public order or morality.

(2) Designated goods or designated services that are likely to cause damage to public order or morality

With regard to designated goods and designated services likely to cause damage to public order or morality, when it is clear that any of the goods are intended for anti-social use or when it is clear that the offering of a service is anti-social (that is to say, goods which can be used for crimes or services which can constitute crimes), they will be handled as those likely to cause damage to public order or morality.

In addition, even if the designated goods or designated services do not fall under

the description of the above goods or services, the designated goods and designated services will be handled as those likely to cause damage to public order or morality when words that are likely to cause damage to public order or morality (including cases in which such words are partially included) are used to indicate them.

Trademarks described as those likely to cause damage to public order or morality include cases in which a registered trademark (most of them are well-known or famous registered trademarks) is included in the mark. This handling is based on the idea that, although a description of a registered trademark does not immediately cause damage to public order or morality in general, the use of a registered trademark in the same manner as a generic term for certain goods or services may cause harm by diluting the effect of the well-known or famous trademark, etc. and the fact that the use of a registered trademark in a patent description, etc. without authorization is handled as a case causing damage to public order or morality. However, it is not necessary to handle such a case as being likely to cause damage to public order or morality when there is a clear description that the trademark is registered.

The designated goods or designated services falling under the above cases become registrable by deleting and amending the respective part or amending the part into another appropriate indication in the process of substantive examination.

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

Examination Guidelines for Trademarks:

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