

Part I: Article 3(1) (Requirements for trademark registration)

Chapter 1: Overall Article 3(1)

Article 3

Any trademark to be used in connection with goods or services pertaining to the business of an applicant may be registered, unless the trademark:

- (i) consists solely of a mark indicating, in a common manner, the common name of the goods or services;
- (ii) is customarily used in connection with the goods or services;
- (iii) consists solely of a mark indicating, in a common manner, in the case of goods, the place of origin, place of sale, quality, raw materials, efficacy, intended purpose, shape (including shape of packages, the same shall apply in Article 26(1)(ii) and (iii)), the method of time of production or use, or other characteristics, or quantity or price, or, in the case of services, the location of provision, articles to be used in such provision, efficacy, intended purpose, modes, method or time of provision, or other characteristics, or quantity or price;
- (iv) consists solely of a mark indicating, in a common manner, a common surname or name of a juridical person;
- (v) consists solely of a very simple and common mark; or
- (vi) in addition to those listed in each of the preceding items, a trademark by which consumers are not able to recognize the goods or services as those pertaining to a business of a particular person.

1. Timing of making a judgment

A judgment on whether a trademark comes under Article 3(1) is made at the time of an examiner's decision.

A judgment on whether a trademark is made at the time of an appeal/trial decision if a request for appeal against an examiner's decision of refusal has been filed.

2. Three-dimensional trademark

(1) If it is recognized that a mark consisting of characters, figures or other elements which acquired distinctiveness is connected to a three-dimensional shape and the mark of characters, figures or other elements is used in a mode as a distinctive mark indicating the source of goods or services, the trademark as a whole is deemed to fall under the provisions of each item concerned of Article 3(1).

(2) A three-dimensional trademark which consists solely of a three-dimensional shape formed by merely giving thickness to characters falling under each item of Article 3(1) is deemed to fall under the provisions of each item concerned of Article 3(1).

3. Motion mark

(1) In order to judge whether a motion mark falls under the provisions of each item concerned of Article 3(1), a mark consisting of characters, figures or other elements of which the motion mark is composed and how it changes as time proceeds shall be examined together so that the trademark is examined as a whole.

(2) If a mark consisting of characters, figures or other elements of which a motion mark is composed does not fall under any items of Article 3(1)(i) to (vi), it shall be regarded that it is not applicable to the motion mark as a whole.

(3) If a mark consisting of characters, figures or other elements of which a motion mark is composed falls under any items of Article 3(1)(i) to (vi), it shall be regarded that it is applicable to the motion mark as a whole in principle.

(4) If changes in time are drawn by a line or other figures as a trajectory, and if the trajectory represents a mark consisting of characters, figures or other elements, it shall be examined whether any items of Article 3(1)(i) to (vi) are applicable to the represented mark as a whole.

4. Hologram mark

(1) A mark consisting of characters, figures and other elements of which a hologram mark is composed, and changes caused by visual effects based on holography and other means (such as those to show it as three-dimensional, as shiny by the reflection of light, and with another display surface depending on different viewing angles) shall be examined together so that the trademark is examined as a whole.

(2) With regard to effects based on holography and other means, which decorate a mark consisting of characters, figures and other elements, such as those which make a trademark appear to be three-dimensional, those which make a trademark shine by the reflection of light, it shall be examined whether any items of Article 3(1)(i) to (vi) are applicable to the mark consisting of

characters, figures and other elements shown on a display surface.

In this case, if any items of Article 3(1)(i) to (vi) are not applicable to the mark consisting of characters, figures and other elements of which the hologram mark is composed of, it shall be regarded that they are not applicable to the hologram mark as a whole.

(3) If the visual effects, out of the those described in (1) above, are used to show the mark with another display surface depending on different viewing angles, whether any items of Article 3(1)(i) to (vi) are applicable to the marks consisting of characters, figures and other elements shown on each display surfaces, as well as how much areas they occupy on their display surfaces, in what context they are displayed and how they relate to marks on other display surfaces shall be examined together so that the hologram mark is examined as a whole.

(4) If any items of Article 3(1)(i) to (vi) are applicable only to the mark consisting of characters, figures and other elements of which the hologram mark is composed of, it shall be regarded that they are applicable to the hologram mark as a whole, in principle.

5. Color mark

(1) If a color mark is composed of combination of multiple colors, whether it falls under any items of Article 3(1)(i) to (vi) shall be examined as a whole. The same shall apply if colors are prescribed to be attached to specific positions of a color mark.

(2) If colors are prescribed to be attached to specific positions of a color mark, not the positions but the colors shall be examined to determine whether the colors fall under any items of Article 3(1)(i) to (vi), because a mark which constitutes the trademark consisting solely of colors is composed solely of colors.

6. Sound mark

(1) In order to judge whether a sound mark falls under the provisions of each item concerned of Article 3(1), sound elements (musical elements, natural sounds and other elements) as well as linguistic elements (lyrics and other elements) of which the sound mark is composed shall be examined together so that the trademark is examined as a whole.

(2) If any items of Article 3(1)(i) to (vi) are not applicable to the linguistic elements, it shall be

regarded that any items of Article 3(1)(i) to (vi) are not applicable to the trademark as a whole.

(3) If any items of Article 3(1)(i) to (vi) are not applicable to the sound elements, it shall be regarded that any items of Article 3(1)(i) to (vi) are not applicable to the trademark as a whole.

(4) A sound mark recognized as merely reading a mark falling under any items of Article 3(1)(i) to (vi) is judged to fall under any items of Article 3(1)(i) to (vi) as a whole.

7. Position mark

(1) In order to judge whether a position mark falls under the provisions of each item concerned of Article 3(1), a mark consisting of characters, figures and other elements of which the position mark is composed, as well as positions to which the marks are to be attached shall be examined together so that the position mark is examined as a whole.

(2) If any items of Article 3(1)(i) to (vi) are not applicable to the marks of which the position mark is composed, it shall be regarded that any items of Article 3(1)(i) to (vi) are not applicable to the trademark as a whole, in principle regardless of positions to which the marks are to be attached.

(3) If any items of Article 3(1)(i) to (vi) are applicable to only the marks consisting of characters, figures and other elements of which the position mark is composed, it shall be regarded that any items of Article 3(1)(i) to (vi) are applicable to the trademark as a whole, in principle.