

Chapter 5: Article 4(1)(vi) (Famous mark indicating a state or a local public entity)

(vi) A trademark being identical with, or similar to, a famous mark indicating the State, a local government, an agency thereof, a non-profit organization undertaking a business for public interest, or a non-profit business for public interest;

1. Regarding the expression “The State, a local government or an agency thereof”

(1) The State shall refer to Japan.

(2) “Local governments” shall refer to an “ordinary local public government” mentioned in Article 1(3) of the Local Autonomy Act (Prefectures and Municipalities) and a “special local public government (a special ward, an association of a local public government and a property ward).

(3) An “agency thereof” refers to each of the legislative, judicial and administrative agencies in the case of the state, and agencies equivalent to them (excluding legislative agencies) in the case of local governments.

2. Regarding the expression “A non-profit organization undertaking a business for public interest”

Whether an organization falls under “a non-profit organization undertaking a business for public interest” is judged by taking its purpose of establishment, organization and the state of enforcement of business for public interest into consideration. In this case, it is not questioned whether the organization is a national or overseas organization or has corporate entity.

(Examples of organizations falling under the provision of this paragraph)

(i) Public interest incorporated associations and public interest incorporated foundations approved by the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations (e.g. The Japan Olympic Committee)

(ii) Social welfare corporations, incorporated educational institutions, medical corporations, religious corporation, specified non-profit organizations, incorporated administrative agency, etc. established based on special laws (e.g. The Japan International Cooperation Agency)

(iii) Political parties

(iv) The International Olympic Committee

(v) The International Paralympic Committee and the Japan Paralympic Committee

(vi) The Young Men's Christian Association

3. Regarding the expression “A non-profit business for public interest”

Whether a business falls under a non-profit business for public interest is judged by taking its purpose and contents, the purpose of establishment and organization of an entity responsible for the business into consideration. In this case, it is not questioned whether the business is undertaken in Japan or overseas.

(Examples of organizations falling under the provision of this paragraph)

- (i) Water supply business, transportation business and gas supply business undertaken by local governments and local public enterprises
- (ii) Businesses (measures) carried out by the State and local governments
- (iii) The Olympic Games organized by the International Olympic Committee and the Japan Olympic Committee
- (iv) The Paralympic Games organized by the International Paralympic Committee and the Japan Paralympic Committee

4. Regarding the expression “A mark indicating the State, etc.”

A “mark indicating” the State, a local government, an agency thereof, and a non-profit organization undertaking a business for public interest (hereinafter referred to as “the State, etc.”) include not only official names of the State, etc. but also abbreviations, commonly-used names, symbols and other indications which reminds consumers of the State, etc.

(Example 1) A mark indicating a non-profit organization undertaking a business for public interest

- (i) Abbreviation of the International Olympic Committee “IOC”
- (ii) Abbreviation of the Japan Olympic Committee “JOC”

(Example 2) A mark indicating a non-profit business for public interest

- (i) “オリンピック” and “OLYMPIC” as the marks indicating the Olympic Games held by the International Olympic Committee and the Japan Olympic Committee, characters of “五輪” as a commonly-used name of the Olympic Games, “the figure indicating the Olympic Games (Olympic symbol)”

(ii) Abbreviations of businesses (measures) undertaken by the State and local Governments

5. Regarding the expression “famous mark”

(1) For the level of famousness of a mark, it is not necessarily required that the mark is recognized by consumers throughout the country taking the purpose of protecting public interest, the interest of consumers, into consideration by respecting the authority and trust of the State, etc. and by preventing confusion over the source with the State, etc.

(2) Whether or not a mark is famous is judged by comprehensively taking the fact of use, for example, the following facts (i) to (iv), into consideration. In this case, care should be taken, because the mark may be recognized as being likely to be famous in a short period time.

(i) A mark actually in use

(ii) The start of its use, the length of its use, or the area where it is used

(iii) The method, frequency and contents of advertising or announcement of a mark

(iv) The number of times of appearance in general newspapers, trade journals, magazines and the Internet, and contents thereof

6. Regarding the expression “A trademark identical with, or similar to another trademark”

The similarity of trademarks as prescribed in this item is judged based on whether they are confused with marks indicating the State, etc. from the perspective of protecting public interest, the interest of consumers, by respecting the authority and trust of the State, etc. and by preventing confusion over the source with the State, etc.