

Chapter 7: Article 4(1)(viii) (Name of another person)

(viii) A trademark containing the portrait of another person, or the name (limited to those that are well known among consumers in the field of goods and services for which the trademark is used), famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned), or a trademark containing the name of another person that does not satisfy the requirements specified by Order for Enforcement;

Order for Enforcement of the Trademark Act

Article 1 The requirements specified by Cabinet Order under Article 4, paragraph (1), item (viii) of the Trademark Act shall fall under both of the following items;

- (i) there is a reasonable relationship between the name of another person contained in the trademark and the applicant for the trademark registration,
- (ii) the applicant does not seek to register a trademark for unfair purposes.

1. Regarding the expression "another person"

"Another person" means a person who actually exists other than the applicant him/herself and includes not only natural persons (including foreigners) and corporations but also associations without capacity.

2. Regarding the expression "name well known among consumers in the field of goods and services for which the trademark is used"

(1) Regarding the expression "field of goods and services for which the trademark is used"

In determining the "field of goods or services for which the trademark is used," not only the designated goods or designated services of the trademark, but also the goods or services that are related to the other person shall be considered from the perspective of protecting moral rights.

(2) Regarding the expression "name well known among consumers"

In determining the "name well known among consumers," when the name is used in the goods or services, whether the other person may be evoked or associated with the name shall be taken into account from the perspective of protecting moral rights, with due consideration of the geographical and business scope in which the other person's name is recognized.

3. Regarding "abbreviations"

(1) Trademarks created by removing the type of corporations such as a stock company or general incorporated associations from the "name" of a corporation fall under the category of "abbreviation." The name of an association without capacity does not include the type of corporation, etc. and thus will be handled according to "abbreviations."

(2) "Names" of foreigners fall under the category of "abbreviations" if they do not have middle names.

4. Regarding "famous" abbreviations, etc.

It is not necessarily required to determine whether or not the trademark in question falls under the "famous" pseudonym, professional name or pen name of another person, or "famous" abbreviation thereof based on solely the consumers of the designated goods or services of said trademark from the perspective of protecting moral rights of authors.

5. Regarding the expression "contains"

The judgment on whether or not the trademark in question is a trademark which "contains" the name, etc. of another person will be made based on the determination on whether the relevant part will be objectively recognized as the name, etc. of another person and will evoke or remind of the other person.

(Example) The trademark "TOSHIHIKO" does not evoke or remind of another person's famous abbreviation "IHI."

6. Regarding trademarks representing the applicant's own name

Trademarks that are representing the name, pseudonym, professional name or pen name of the applicant's own name or abbreviations thereof and fall under the "the name (limited to those that are well known among consumers in the field of goods and services for which the trademark is used), famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned)," or trademarks containing the name of another person and whose applicant seeks to register a trademark for unfair purposes, fall under this item for damaging the moral interest of the other person.

7. Regarding the expression "has been approved by the person concerned"

The registration of the trademark must have been "approved by the person concerned" at the time of decision to grant trademark registration.

8. Regarding the expression "requirements specified by Order for Enforcement"

(1) Regarding the expression "there is a reasonable relationship between the name of another person contained in the trademark and the applicant for the trademark registration"

For example, if the name of another person contained in the trademark applied for is the applicant's own name, the name of the founder or representative, or the name of a store that has been in continuous use since before the application was filed, the trademark will be determined to have a reasonable relationship.

(2) Regarding the expression "the applicant does not seek to register a trademark for unfair purposes"

For example, if publicly available information or materials obtained by providing information, etc. indicate that the purpose is to harass or induce others to preemptively purchase a trademark, it will be determined that there is an unfair purpose.