

Chapter 12: Article 4(1)(xiv) (Name of a variety registered under the plant variety protection and seed act)

(xiv) A trademark being identical with, or similar to, the name of a variety registered in accordance with Article 18 (1) of the Plant Variety Protection and Seed Act (Act No. 83 of 1998), if such a trademark is used in connection with seeds and seedlings of the variety or goods or services similar thereto;

1. Regarding the expression a trademark which "is similar"

In judging the similarity under this item, each judging factor such as the appearance, sound and concept of the trademark must be taken into consideration in a comprehensive manner from the perspective of preventing any specific person from having a monopoly on the name of a registered variety.

2. When an application for trademark registration has been filed for the name of a registered variety

(1) When the designated goods are the harvest pertaining to the relevant variety, Article 3(1)(iii) is determined to be applicable.

(2) When the designated goods are the processed products pertaining to the relevant variety, the relevant trademark will be judged as to whether or not it falls under Article 3(1)(iii) based on the relation with the designated goods.

(3) When the designated services are retail services (provision of benefits for customers conducted in the course of retail or wholesale business) whose line of goods are harvests or processed products of harvest pertaining to the variety, the trademark will be judged as to whether or not it falls under Article 3(1)(vi) of the Trademark Act based on the relation with the designated services.

3. The name of a registered variety does not fall under this item after the extinction of the plant breeder's right due to reasons such as the lapse of the duration of its registration, and it will be determined whether or not such name falls under the provisions of Article 3(1)(i), (iii) or (vi) of the Trademark Act based on the relationship with the designated goods or designated services.

4. The name of a variety registered in accordance with Article 12-4(1) of the Plant Variety Protection and Seed Act (Act No. 83 of 1998) prior to the amendment at the time of enforcement of that Act will be handled in the same manner as that mentioned in 3. above.