

Part 5: Article 3(1)(iii) (Indication of Origin, Place of Sale and Quality of the Goods, or Indication of Location and Quality of Provision of the Services)

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, quantity, shape (including shape of packages), price, the method or time of production or use, or, in the case of services, the location of provision, quality, articles to be used in such provision, efficacy, intended purpose, quantity, modes, price or method or time of provision;

1. Trademarks composed of more than a single mark indicating, in the case of goods, the place of origin, place of sales, quality, raw materials, efficacy, intended purpose, quantity, shape (including shape of packages), or price or the method or time of production or use and trademarks composed of more than a single mark indicating, in the case of services, the location of provision, quality, articles to be used in such provision, efficacy, intended purpose, quantity, modes, price or the method or time of the provision of services fall under the provision of this paragraph.

2. Figures or three-dimensional shapes indicating the place of origin, place of sale, quality, or the method of production and use them; or indicating the place of location of provision, quality, articles to be used in such provision, or the method of the provision of services fall under the provision of this paragraph.

3. (1) A trademark indicating a geographical name in Japan or overseas does not necessarily require that the designated goods are produced or sold or designated services are provided practically at the place indicated by the geographical name. Where a consumer or a trader generally recognizes that the designated goods will be produced or sold or the designated services will be provided at the place indicated by the geographical name, the trademark falls under the provision of this Item as indicating origin or place of sale of the goods or location of provision of the service. The names of states, famous geographical names (including the names of administrative zones, former state names and foreign geographical names), the names of shop streets (including famous foreign busy streets), maps, etc. are considered, in principle, as the place of origin of goods or the place of their sale or the location of provision of services (including the place of trading).

[NOTE] "A geographical name in Japan and overseas" shall include a name or a map indicating a nation, a capital, a state, a prefecture, the capital of a state, a

province, the capital of a province, a county, a prefectural capital (the capital of a prefecture), an old nation, an old area, a country, a city, a special city ward, an administrative area, a busy downtown street, a sightseeing area (including its location and surrounding areas), a lake, a mountain, a river, or a park, etc. (the same shall apply hereinafter).

(2) Due consideration shall be given that even if a trademark indicating a geographical name in Japan or overseas does not fall under the provisions of this Item, the trademark may fall under the provision of Article 3(1)(vi).

4. Trademarks indirectly indicating the “quality,” “efficacy,” “use,” etc. of designated goods or the “quality,” “efficacy,” “use,” etc. of designated services do not fall under the provision of this paragraph.

5. Trademarks such as “コクナール,” “スグレータ,” “とくべーつ,” “うまーい,” and “早ーい” which, when examined with their prolonged sound symbols excluded, are recognized as indicating the quality, use and efficiency of the goods or services fall under the provision of this paragraph in principle.

6. Trademarks per se not recognized as surpassing the shapes of designated goods (including shape of packages) or the shapes of articles for use for the provision of designated services in scope fall under the provision of this paragraph.

7. (1) The title of a book is judged to indicate the quality of goods in case where it directly indicates specific contents.

(2) The name of a regular publication such as a newspaper, magazine, etc. is considered, in principle, as distinctive.

8. The title of a “film” recording images is judged to indicate the quality of goods in case where it directly indicates specific contents. This applies to “sound recorded magnetic tapes,” “sound recorded compact disks,” “phonograph records,” etc.

9. The “name of a broadcast program” is judged to indicate the quality of services in case where it directly indicates specific contents in connection with a designated service (production of radio or television programs, Television broadcasting, etc.) (including the program name of a series).

10. The name of an article for use for the provision of a designated service (including the rental of cine-films, image recorded magnetic tapes, sound recorded magnetic tapes, recorded compact disks, phonograph records, etc.) is judged to indicate the quality of a service in case where it directly indicates specific contents in connection

with the designated service.

11. A foreign state name, geographical name, etc. directly indicating a specific cooking style (such as French, Italian, Beijing, etc.) in connection with a service relating to the “providing of foods and beverages” is judged to indicate the quality of the service.

12. A three-dimensional trademark designating a service to handle buildings, estates, etc. and simply indicating the shape of the building in a common manner falls under the provision of this paragraph as it is the indication of an article for use for the provision of services in a common manner.

(Note) Article 2(4) of the Trademark Act interpreting “use” stipulates goods and services shaped into a mark. Including Items (iii) and (vi), the Trademark Act does not include real estates such as buildings as goods. With all this taken into account, trademarks registrable with respect to the shape of a building (a three-dimensional trademark) are substantially limited to cases where they are used for advertisements relating to designated goods or designated services.

13. In the case of retail services, trademarks which are recognized as marks indicating traded goods are considered to be those indicating “articles for use in such a provision.”

14. Item 3, Article 3(1)(i), Part 3, Chapter I of the Guidelines shall apply *mutatis mutandis* to “a mark indicating in a common manner” in this paragraph.