

Chapter VII: Article 7-2
(Regional collective trademarks)

Part 1: Principle Paragraph of Article 7-2 (1)

Article 7-2

Any association established by a special Act, including a business cooperative (those which do not have juridical personality are excluded, and limited to those which are established by a special Act providing, without a just cause, that the association shall not refuse the enrollment of any person who is eligible to become a member or that the association shall not impose on any of its prospective members any condition that is heavier than those imposed on its existing members), a commercial and industrial association, a chamber of commerce and industry or a specified non-profit corporation provided in Paragraph 2, Article 2 of the Act on Promotion of Specified Non-profit Activities (Act No. 7 of 1998), or a foreign juridical person equivalent thereto (hereinafter referred to as an "Association, etc.") shall be entitled to obtain a regional collective trademark registration with respect of any of the following, provided that the trademark is used by its members and, as a result of the use of the said trademark, the said trademark is well known among consumers as indicating the goods or services pertaining to the business of the applicant or its members, notwithstanding the provision of Article 3 (except a case falling under item (i) or (ii) of Article 3 (1)):

1. Requirements for Subject in the Principle Paragraph of Article 7-2(1)

- (1) "Any association established by a special Act, including a business cooperative (those which do not have juridical personality are excluded, and limited to those which are established by a special Act providing, without a just cause, that the association shall not refuse the enrollment of any person who is eligible to

become a member or that the association shall not impose on any of its prospective members any condition that is heavier than those imposed on its existing members)" (hereinafter referred to as "a business cooperative, etc.")

The following matters (i) and (ii) shall be confirmed:

- (i) In any document issued by a public organization, including a certificate of registered matters submitted as of filing an application (hereinafter referred to as a "certificate of registered matters", etc.), the applicant is an Association which has juridical personality.
- (ii) The corresponding Article of a basis law for the establishment described in a copy of the basis law for the establishment or a request, which are submitted as of filing the application, has a "provision regulating, without a just cause, that the association shall not refuse the enrollment of any person who is eligible to become a member or that the association shall not impose on any of its prospective members any condition that is heavier than those imposed on its existing members" (hereinafter referred to as a "provision of free enrollment").

Example:

Small and Medium-Sized Enterprise Cooperatives Act Article 14

Agricultural Cooperatives Act Article 20

Act Concerning Liquor Business Associations and Measures for
Securing Revenue from Liquor Tax Article 10

- (2) A commercial and industrial association, a chamber of commerce and industry, or a specified non-profit activities corporation

By the certificate of registered matters, etc. submitted as of filing an application, it is confirmed that the applicant is a commercial and industrial association established under the Commerce and Industry Association Act, or a chamber of commerce and industry established by the Chambers of Commerce and Industry Act, or a specified non-profit corporation provided in Paragraph 2,

Article 2 of the Act on Promotion of Specified Nonprofit Activities.

(3) A foreign juridical person equivalent to a cooperative business association, etc., a commercial and industrial association, a chamber of commerce and industry, or a specified non-profit corporation

(a) Regarding a foreign juridical person equivalent to a cooperative business association, etc., the following matters (i) to (iii) are confirmed:

(i) In the corresponding article of the basis law for the establishment described in the copy of the basis law for the establishment or the request, submitted as of filing the application (it is possible to substitute the article with other documents specified by public organizations, including a statute, a notification, and a judicial precedent. Hereinafter referred to as "the copy of the basis law for the establishment, etc."), there needs to be a provision aiming at improvement of member's common profits.

When the copy of the basis law for the establishment, etc. does not exist in terms of the system of an interested state, the applicant is demanded to submit the company contract (the fundamental rule concerning the purpose, the internal constitution, and the activity, etc. of the juridical person. Hereinafter, the same shall apply.) which fulfils the above specified requirements.

(ii) In a document (for example: juridical person certificate, etc.) in which a public organization proved that the applicant is a juridical person, the applicant needs to have juridical personality.

(iii) There needs to be a provision of free enrollment in the copy, etc. of the basis law for the establishment.

(b) Regarding to a foreign juridical person equivalent to a commercial and industrial association or a chamber of commerce and industry, the following matters (i) to (iii) are confirmed:

(i) In the copy of basis law for the establishment, etc., there needs to be a

provision aiming at improvement and development of commerce and industry and not aiming at profit.

When the copy of the basis law for the establishment, etc. does not exist in terms of the system of an interested state, the applicant is demanded to submit the company contract which fulfils the above specified requirements.

- (ii) In a document (for example: juridical person certificate, etc.) in which a public organization proved that the applicant is a corporation, the applicant needs to have juridical personality.
 - (iii) There needs to be a provision of free enrollment in the copy, etc. of the basis law for the establishment.
- (c) Regarding a foreign juridical person equivalent to a specified non-profit corporation, the following matters (i) to (iii) are confirmed:

- (i) In the copy of basis law for the establishment, etc., there needs to be a provision not aiming at profit and intending to conduct an activity corresponding to anyone of activities listed in each item of appended table, Article 2 of the Act on Promotion of Specified Nonprofit Activities with an aim to making contribution to improvement of benefit for the general public.

When the copy of the basis law for the establishment, etc. does not exist in terms of the system of an interested state, the applicant is demanded to submit the company contract which fulfils the above specified requirements.

- (ii) In a document (for example: juridical person certificate, etc.) in which a public organization proved that the applicant is a corporation, the applicant needs to have juridical personality.
- (iii) There needs to be a provision of free enrollment in the copy, etc. of the basis law for the establishment.

2. "Trademark used by its members"

When, like a case where the applicant is an association (for example, a consumer cooperative, a ship owner's mutual protection and indemnity association, and an agricultural mutual relief association), thereby, it is assumed that the trademark is not used by the members of the association, it is clear that the trademark claimed in the application concerned is not used by the members, the trademark for which a regional collective trademark registration is sought shall be treated as not being a "trademark used by its members".

3. It should be noted that a trademark must fulfill all of the requirements below to fall under "the trademark is used by its members and, as a result of the use of the said trademark, the said trademark is well known among consumers as indicating the goods or services pertaining to the business of the applicant or its members," in the principle paragraph of Article 7-2.

- (i) The applicant or its members are using the trademark in an application (see Item 5 below).
- (ii) The trademark in an application is well known among consumers (see Item 6 below).
- (iii) The trademark is well known among consumers as indicating the goods or services pertaining to the business of the applicant or its members

4. Where the members of a collective are using the trademark for which a regional collective trademark registration is sought, a judgment as to whether the trademark is "the trademark is used by its members" will be made with consideration given to whether or not the use of the trademark is carried out under the collective's management.

5. Registration by applying the principle paragraph of Article 7-2(2) is only

acceptable where the trademark in an application and the designated goods or designated services are identical to those in use.

Item 2 (2) and (3), Chapter II: Article 3(2) of the Guidelines shall apply *mutatis mutandis* to decisions as to the identity of trademarks.

6. (1) Although depending on individual situations, such as the kinds of goods or services, main consumers, and the state of transaction activity, “well known among consumers” in the principle paragraph means that even if the trademark is not known among nationwide consumers, it requires to be known by certain scope of consumers, for example, consumers in the neighboring prefectures.

(2) Item 3, Chapter II: Article 3(2) of the Guidelines shall apply *mutatis mutandis* to the method for proving the well-knownness and decisions thereon concerning the principle paragraph of Article 7-2(2).

7. Where a trademark in an application does not fall under any paragraph of Article 7-2(1) because the name of the region comprising the trademark does not fall under “the name of the region” under Article 7-2(2), such a trademark may not be registered under the provision of the principle paragraph of Article 7-2(2).

8. For descriptions regarding the designated goods or designated services covered by a regional collective trademark, see Part 13: Article 4(1)(xvi), Chapter III of the Guidelines.