

## Part 2: Principal Paragraph of Article 3(1)

### Article 3

Any trademark to be used in connection with goods or services pertaining to the business of an applicant may be registered, unless the trademark:

1. A trademark evidently not intended for “used in connection with goods or services pertaining to the business of an applicant” is not judged to fall within the category of trademarks registrable in accordance with the principal paragraph of Article 3(1), in principle.

(Examples)

(i) In case where it is clear that an applicant will not carry out his business in connection with designated goods or designated services because the scope of the applicant’s business is legally limited.

(ii) In case where it is clear that an applicant will not carry out his business in connection with designated goods or designated services because persons executing business connected with designated goods or designated services are legally restricted.

2. An application containing designated goods or designated services that contained in an application fall under the following (1) or (2) will receive a notification of reason for refusal stating that the trademark does not fall within the category of trademarks registrable in accordance with the principal paragraph of Article 3(1), because there is a justifiable doubt as to whether the applicant is conducting, or is planning to start, business connected with the designated goods or designated services which is regarded as the premise for the use of a trademark. The use or intention of use of the trademark will be ascertained by investigating the applicant’s business.

However, this shall not apply where the applicant, at the time of filing an application, submitted reference documents in accordance with Item 3 below, by which use or intention of use of the trademark can be ascertained.

(1) Regarding services provided for in Article 2(2) of the Trademark Act (hereinafter referred to as “retail services”)

(a) Where a person (natural person) has designated services falling under the category of “retail services or wholesale services for a variety of goods in each of the fields of clothing, foods and beverages, and livingware, and taking all goods together” (hereinafter referred to as “general retail services”).

(b) Where a juridical person has designated services falling under the category

of general retail services, and if the investigation as to whether or not the trademark will be “used in connection with goods or services pertaining to his business” found out that the applicant is not conducting general retail services.

(c) Where more than one of the retail services have been designated that are not similar to each other.

(2) Regarding overall goods and services

Where there is a doubt as to the use or intention of use of a trademark in regard to the designated goods or designated services, since the designation of goods or services ranges widely in one classification.

3. Where the reason for refusal contained in Item 2 above is notified, use or intention of use of the trademark will be ascertained through the following procedures.

(1) In order to prove that a trademark will be “used in respect of goods or services in connection with his business,” it requires the applicant to show, on at least a similar group basis, that he is conducting, or planning to start, business connected with the designated goods or designated services.

(2) The following, for example, will be accepted as means of proof that the applicant is carrying out business connected with the designated goods or designated services.

(i) Printed matters (newspapers, magazines, catalogs, leaflets, etc.)

(ii) Photographs of the exterior and interior of the store

(iii) Business documents (order forms, delivery statements, invoices, receipts, etc.)

(iv) Certificates issued by public organizations (government, local governments, foreign embassies in Japan, Chambers of Commerce and Industry)

(v) Certificates issued by others in the same trade, trade clients, consumers, etc.

(vi) Articles on the internet

(vii) Documents stating the sales amount of goods in relation to retail services

(3) The fact that the applicant is conducting business connected with retail services will be confirmed in the following manner.

(a) For retail services belonging to general retail services, it will be proved in a comprehensive manner by referring to documents certifying, for example:

(i) that the applicant is a retailer or a wholesaler.

(ii) that the above retailer or wholesaler is providing retail services at one

establishment for a variety of goods in each of the fields of clothing, foods and beverages, and living ware, and taking all goods together.

(iii) that the sales of each field of clothing, foods and beverages, and living ware is accounting for around from 10% to 70% of the total sales.

(b) For retail services other than general retail services, it will be proved in a comprehensive manner by referring to documents certifying, for example:

(i) that the applicant is a retailer or a wholesaler

(ii) that the above retailer or wholesaler handles goods connected with retail services

(4) In order to prove that the applicant is planning to start business connected with the designated goods or designated services, the applicant is required to show his intention of starting to use the trademark within 3 to 4 years from the date of filing the application (within three years following the registration). The applicant thus will be requested to submit documents specifying his intention of use of the trademark and documents stating his preparation status (business plan).

The above-mentioned documents specifying his intention of use of the trademark must include the following descriptions, on which the applicant will sign and set his seal (in the case of juridical person, it will require at least a signature and seal of the director of the relevant business).

(i) Intention of use of the trademark in the application

(ii) Specification of point as to whether the applicant will engage in production or assigning (including sales) of the designated goods (service provision plan in the case of designated services)

(iii) When to start using the trademark

The above-mentioned documents stating his preparation status must specify its preparation status and business plan until the start of use (decisions concerning goods or services planning; construction of factories and stores, etc.)

Where his intension of use of the trademark is uncertain, or there is a doubt as to the relevant business plan, the applicant will be requested, as needed, to submit further documents supporting the business operation and plan.

(Note) The criteria in Item 2 and 3 above will come into force for applications for trademark registration filed on or after April 1, 2007.

4. When the international registered trademark in the application for international registration does not correspond to the trademark the provisions of Article 2(1) of the Trademark Act for the international trademark registration, the trademark is judged not to fall within the category of trademarks registrable under the principal

paragraph of Article 3(1).

(Examples)

(i) Sound mark (trademarks consisting of sounds)

(ii) Olfactory mark (trademarks consisting of scent)

(iii) Color mark (trademarks consisting of colors alone)

\*Consisting of colors alone and not combined with characters, diagrams, symbols and three-dimensional forms.

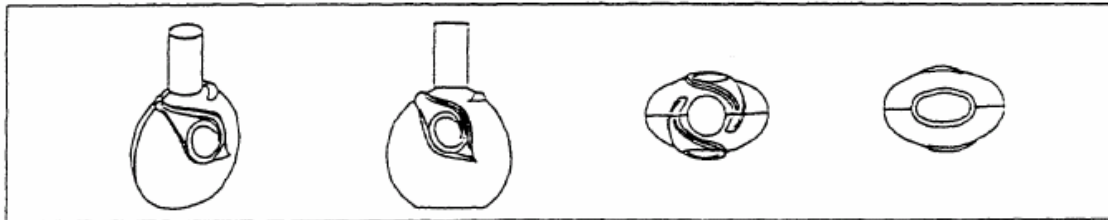
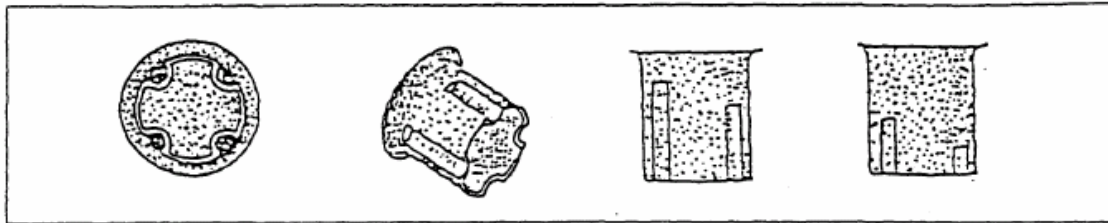
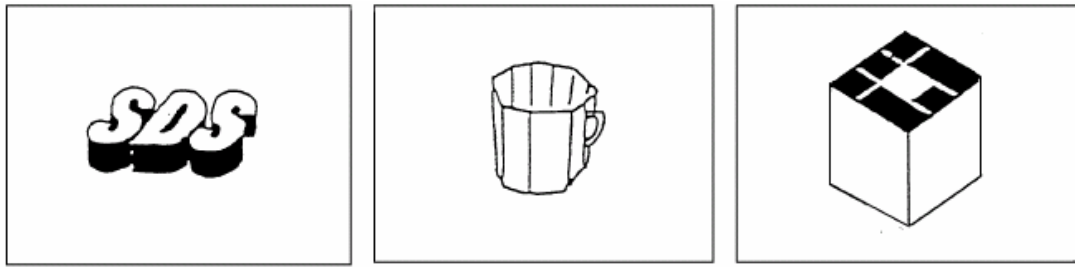
5. A collective trademark not to be used by an organization and its members or to be used for the designated goods and services only by an organization but not by its members is judged not to fall within the category of trademarks registrable under the principal paragraph of Article 3(1) (as applied under Article 7(2)).

6. A trademark described as corresponding to “a collective trademark” in the application of an international trademark registration is judged not to fall within the category of trademarks registrable in accordance with the principal paragraph of Article 3(1) when the certificate prescribed in Article 7(3) (certifying the applicant as a juridical person that falls under Article 7(1)) is not submitted.

Furthermore, the application of trademark registration (domestic application) will be subject to amendment orders (formality).

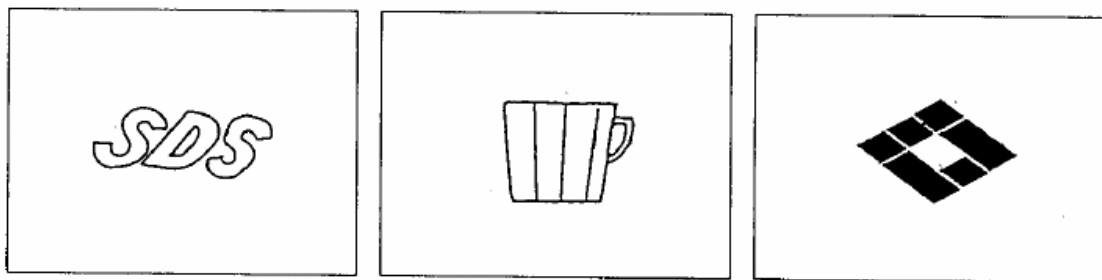
7. A trademark described as a three-dimensional trademark but not so recognized in composition and mode from its description given in the column (hereinafter referred to as the “trademark description column”) to describe the trademark seeking to apply for a trademark registration is judged not to fall within the category of trademarks registrable in accordance with the principal paragraph of Article 3(1). The application for international trademark registration will be handled in the same manner.

(1) Examples of Trademarks Recognized as Three-Dimensional in Composition and Mode



(2) Examples of Trademarks Not Recognized as Three-Dimensional in Composition and Mode

(i) In case where a shape is not described as the appearance of a three-dimensional object in the trademark description column



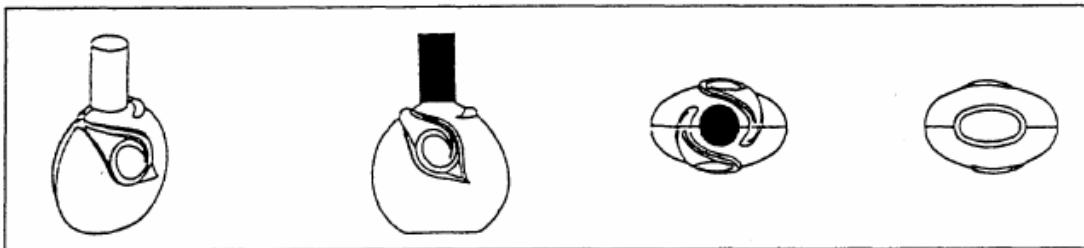
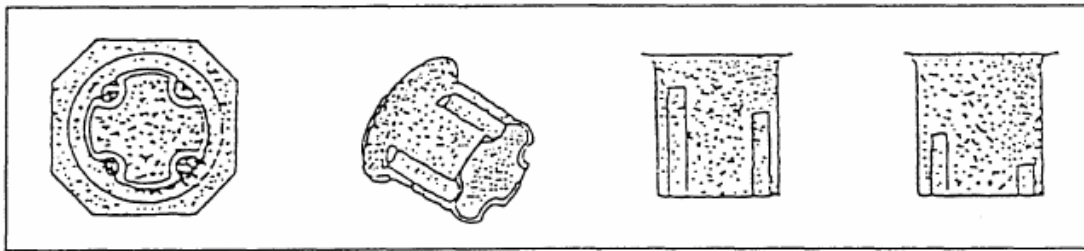
(Note) A shape as an outer appearance of a three-dimensional object such as a thickness, etc. is not described and cannot be recognized as a three-dimensional trademark.

(ii) In case where a plain mark and a three-dimensional shape are described in separate compositions and separate modes



(Note) A composition or mode with a plain mark not fitted on the surface of a three-dimensional shape but with a plain mark separate from a three-dimensional shape is not considered to indicate a shape as an outer appearance of a three-dimensional object and recognized as a three-dimensional trademark.

(iii) In case where more than a single drawing described in the trademark description column do not match each other



(Note) Three-dimensional shapes, figures, characters and colors indicated do not match each other.