Trial Decision

Invalidation No. 2012-890054

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The decision on the case of the trademark invalidation trial between the above parties on Trademark Registration No. 5494262, dated February 1, 2013 came with a court decision of revocation of the trial decision (2013 (Gyo-Ke) 10065, rendition of decision on December 18, 2013) at the Tokyo High Court, the case was proceeded further, and another trial decision was handed down as follows.

Conclusion

Registration of "cosmetics" in Class No.3 from among the designated goods of Trademark Registration No. 5494262 shall be invalidated.

The costs in connection with the trial shall be borne by the demandee.

Reason

No. 1 The Trademark

The trademark with Trademark Registration No. 5494262 (referred to as "the Trademark" below) is configured as indicated in the Attachment (1), and the application for its registration was filed on November 11, 2011. The decision for registration was made on April 23, 2012 by setting "water for industrial purposes; nitrogen compounds; surface-active agents [surfactants]; chemical agents; other chemicals; artificial

sweeteners" of Class No.1 and "soaps and detergents; dentifrices; cosmetics; aromatic oil; essential oil; natural perfumery prepared from vegetables; natural perfumery prepared from animals; synthetic perfumery; blended perfumery; food flavorings prepared from essential oils; incenses; abrasive paper [sandpaper]; abrasive cloth; abrasive sand; artificial pumice stone; polishing paper; polishing cloths; false nails; false eyelashes;" of Class No.3 as the designated goods, and the trademark was registered on May 18 of the same year.

No. 2 Cited Trademarks

The trademark registrations cited by the demandant as the reasons for invalidation of registration of the Trademark are as indicated below in 1 to 3, and both of these trademark registrations are currently still valid.

1 The trademark of Trademark Registration No. 5408589 (hereinafter referred to as "Cited Trademark 1") consists of the Alphabetic characters, "RAFFINE", in standard characters and the application for its registration was filed on November 2, 2010 and the trademark was registered on April 22, 2011 with designated goods of Class No.3, Class No.8, Class No.21, and Class No.26 as specified in the Trademark Registry, including "Cosmetics" of Class No.3.

2 The trademark of Trademark Registration No. 5411218 (hereinafter referred to as "Cited Trademark 2") consists of the Alphabetic characters, "RAffINE", in standard characters, and the application for its registration was filed on August 24, 2010 and the trademark was registered on May 13, 2011 with designated goods of Class No.3 "Cosmetics; false nails; false eyelashes".

3 The trademark of Trademark Registration No. 5431315 (hereinafter referred to as "Cited Trademark 3"), as per Attachment 2, consists of the Alphabetic characters, "RAffINE", in which the letter part, "ff", is slightly stylized, and the application for its registration was filed on February 4, 2011, and he trademark was registered on August 12, 2011 with designated goods of Class No.3, Class No.8, Class No.21, and Class No.26 as specified in the Trademark Registry, including "Cosmetics" of Class No.3.

The Cited Trademark 1, Cited Trademark 2, and Cited Trademark 3 are hereinafter collectively referred to as "Cited Trademarks".

No. 3 The demandant's allegation

The demandant requested a trial decision whose content is the same as the conclusion, summarized and mentioned reasons for request as well as a rebuttal against a reply as follows, and submitted Exhibits A No. 1 to A No. 24 (including branch numbers) as means of evidence.

1 Reasons for request

(1) Similarity between the Trademark and Cited Trademarks

A Pronunciation, meaning, and appearance of the Trademark

The Trademark consists of the alphabet characters, "Raffine", written horizontally in the upper section of its two-tiered character strings, and the alphabet characters, "Style", written horizontally in the lower section of the configuration along with the figure of a circle. The said letters, "Raffine", produce the same pronunciation of "*raffine*" as the Cited Trademarks. With the letters, "Style", in the lower section producing the pronunciation of "*style*", the entire trademark produces the pronunciation of "*raffine-style*".

In appearance, it cannot be said that in the Trademark, the letter part of "Raffine" in the upper section and the letter part of "Style" in the lower section exist as a series and one block, but rather, the two letter parts are obviously separated from one another, allowing only the letter part of "Raffine" to be recognized independently. As such, it can be said that, when an onlooker observes the trademark, the letter part, "Raffine", in the upper section is the first part that would be recognized first.

Furthermore, the letters, "Raffine", in the upper section is an English or French adjective meaning "refined or sophisticated", and the letters, "Style", in the lower section is an English noun meaning "style, type, lifestyle", among others. In regards to the Trademark, with cosmetics among its designated goods, it can be said that the letters, "Style", in the lower section do not have any particular meaning, but that the letters, "Raffine", in the upper section have a special meaning that creates an impression on products.

As described above, it is believed that the letter part, "Raffine", in the upper section is the primary part of the Trademark, giving strong distinctiveness to the products, which bear the Trademark, from other products.

B Pronunciations, meaning, and appearances of Cited Trademarks

Cited Trademark 1 consists of the alphabet characters, "RAFFINE", in standard characters, Cited Trademark 2 consists of the alphabet characters, "RAffINE", in standard characters, and Cited Trademark 3 consists of the letters, "RAffINE", as indicated in Attachment 2. Cited Trademarks produce the pronunciation, "*raffine*", in correspondence to the letters of the respective marks. The letters, "RAFFINE", come from an English or French adjective meaning "refined or sophisticated", and these letters have a special meaning creating an impression on the designated goods. The alphabet characters of Cited Trademark 1 are all in capital letters. In Cited Trademark 2, the letter part, "ff", is in small letters, with the remaining letters entirely in capital letters. In Cited Trademark 3, the alphabet characters are as indicated in Attachment 2, with the letter part, "ff", slightly stylized and configured in a way to make it slightly taller than other letters.

C Similarity of the Trademark and Cited Trademarks

As described above, the entirety of the Trademark produces the pronunciation, "*raffine-style*". In addition, the primary part, "Raffine", or the letter part in the upper section, produces the pronunciation, "*raffine*", and the meaning of "refined or sophisticated".

On the other hand, Cited Trademarks produce the pronunciation, "*raffine*", from the respective configurations, and have the meaning, "refined or sophisticated". In addition, the letter part, "Raffine", which is the primary part of the Trademark, has the same spelling as the alphabet characters used in Cited Trademarks.

While in the primary part of the Trademark, the capitalized part is only the first one letter, "R", the Cited Trademarks differ from the Trademark only with respect to the following points: Of the seven letters of the respective configurations, Cited Trademark 1 indicates all letters using capital letters; and Cited Trademark 2 and Cited Trademark 3 use capital letters for the first two letters, "RA", and the last

three letters, "INE". Furthermore, while in Cited Trademark 3, the letter part, "ff", is slightly stylized and is configured in a way to make it slightly taller than other letters, it can be said that the said letter part is configured as a series and one block in combination with the remaining letters. Next, while the Trademark has the color of green, it cannot be acknowledged that, compared to the Cited Trademarks that are written in black, the difference in color makes the difference in appearance prominent. As such, it should be said that the primary part of the Trademark and the Cited Trademarks are confusingly similar in appearance as well.

Accordingly, it should be said that the Trademark and the Cited Trademarks are similar in pronunciation, meaning, and appearance.

(2) Similarity between the Trademark and the demandant's cosmetics brand, "RAffINE"

A Pronunciation and meaning of the demandant's cosmetics brand, "RAffINE"

The demandant's cosmetics brand, "RAffINE", produces the pronunciation, "*raffine*". The term, "RAffINE", is an English or French adjective meaning "refined or sophisticated", and gives a special meaning to the products covered by the demandant's cosmetics brand.

B Similarity between the Trademark and the demandant's cosmetics brand, "RAffINE"

As described above in (1)A, the entirety of the Trademark produces the pronunciation, "*raffine-style*", and the primary part, or the letter part of "Raffine" in the upper section, also produces the pronunciation, "*raffine*". In addition, the part, "Raffine", which is the primary part of the Trademark, has the meaning, "refined or sophisticated".

On the other hand, the demandant's cosmetics brand, "RAffINE", produces the pronunciation, "*raffine*", and has the meaning, "refined or sophisticated".

As such, the letter part, "Raffine", or the primary part of the Trademark, and the demandant's cosmetics brand, "RAffINE", produce the same pronunciation and meaning.

Accordingly, it should be said that the Trademark is similar to the demandant's cosmetics brand, "RAffINE", in pronunciation and meaning.

(3) Fame and prominence of the demandant's cosmetics brand, "RAffINE"

As of April 2012, the demandant operates 17 shops across Japan (Exhibit A No. 11-1) and sells cosmetics bearing the name, "RAffINE". Also, the demandant sells its products on an online shopping site via the demandant's homepage (Exhibit A No. 11-2), as well as on Yahoo and Rakuten shopping sites (Exhibit A No. 11-3). The demandant also continuously advertises its products and engages in the promotion of product sales through TV broadcast on 70 stations nationwide and over 120 types of paper ads (Exhibit A No. 11-4). As a result of the demandant's marketing efforts described above, the sales volume of the products under the cosmetics brand, "RAffINE", increased. According to the "Cosmetics Marketing Directory 2011 No. 1" (Fuji Keizai Co., Ltd.), in the cosmetic moisturizer division

during 2008 to 2011, the demandant's products ranked third in the share by manufacturers, and the brand, "RAffINE", ranked second in the share by brands (Exhibit A No. 11-5). In addition, the demandant was awarded several times for its Rakuten shopping site (Exhibit A No. 11-6). Furthermore, the number of access to the demandant's shopping site has significantly increased in recent years, indicating that the recognition of the demandant's company and brand products is increasing even more (Exhibit A No. 11-7).

As described above, it is believed that the demandant's cosmetics brand, "RAffINE", is widely recognized among consumers as representing the cosmetics brand under which the demandant sells its products.

(4) Article 4(1)(xi) of the Trademark Act

The Trademark has the letters, "Raffine", in the upper section of its configuration, and these letters have the same pronunciation as Cited Trademarks. The letter part, "Raffine", constitutes the primary part of the Trademark. As such, as described in detail in (1) above, the pronunciation, meaning, and appearance of the Trademark are similar to the pronunciations, meanings, and appearances of Cited Trademarks. Also, designated goods of the Trademark include "cosmetics; false nails; false eyelashes" of Class No.3, and designated goods of Cited Trademarks also include "cosmetics; false nails; false eyelashes" of Class No.3.

As such, designated goods of the Trademark are the same as or similar to designated goods of Cited Trademarks.

Accordingly, the Trademark falls under Article 4(1)(xi) of the Trademark Act.

(5) Article 4(1)(xv) of the Trademark Act

A Judgment criteria under Article 4(1)(xv) of Trademark Act

The risk of the Trademark creating confusion of source in connection with how the demandant's cosmetics brand, "RAffINE", is shown, shall be considered below pursuant to the judgment criteria held in a Supreme Court Ruling (Exhibit A No. 13).

B Level of similarity between the Trademark and the demandant's cosmetics brand, RAffINE"

As described in detail in (1) above, the primary part of the Trademark is the letter part, "Raffine", in the upper section of the configuration, and it produces the pronunciation, "*raffine*", and has the meaning, "refined or sophisticated".

On the other hand, the demandant's cosmetics brand, "RAffINE", produces the pronunciation, "*raffine*", and has the meaning, "refined or sophisticated".

As such, the letter part, "Raffine", which is the primary part of the Trademark, and the demandant's cosmetics brand, "RAffINE", share the same pronunciation and meaning.

Accordingly, it should be said that the Trademark is similar to the

demandant's cosmetics brand, "RAffINE".

C Fame and prominence of the demandant's cosmetics brand, "RAffINE"

As described in detail in (3) above, the demandant's cosmetics brand, "RAffINE", is widely recognized among consumers as representing the cosmetics brand under which the demandant sells its products.

D Association between products, and commonality in traders and consumers

Designated goods of the Trademark include "cosmetics" of Class No.3. On the other hand, the demandant operates its brand of cosmetics bearing the name, "RAffINE", and sells various products in shops and online shopping sites, including the demandant's own homepage.

"Cosmetics" as used here include a wide variety of product lines according to consumer preferences and body parts on which the products are used. In any case, these products are the same in the point that they are purchased and used for the purpose of "cleansing bodies and beautifying appearances". Also, consumers of the designated goods of the Trademark and of the cosmetics sold by the demandant are the general consumer consisting mostly of women, and thus the demandant's cosmetics target the same consumers. Furthermore, the places where these products are sold are shops and on the Internet, and thus the places of sales are also the same.

In light of the above, the cosmetics which are covered by the designated goods of the Trademark and the products pertaining to the demandant's business are very closely related to each other.

E Whether or not the trademark is "likely to cause confusion"

As described above, when the fact that the Trademark and the demandant's cosmetics brand, "RAffINE", are similar, and the fact that "RAffINE" is widely recognized by consumers as representing the cosmetics brand under which the demandant's products are sold, and the fact that the cosmetics, which are part of the designated goods of the Trademark, are very closely related to the products pertaining to the demandant's business, are comprehensively taken into account, it can be said that if the demandee uses the Trademark for the designated goods, "cosmetics", traders or consumers who come into contact with such use have the risk of being reminded of the demandant's cosmetics brand, and mistakenly thinking that the product concerned is handled by someone who is somehow associated with the demandant, therefore experiencing confusion as to the source of the product concerned.

Accordingly, the Trademark falls under Article 4(1)(xv) of the Trademark Act.

(6) Article 4(1)(xix) of the Trademark Act

A Well-known and prominence of the demandant's cosmetics brand, "RAffINE"

As described in detail in (3) above, it is believed that the demandant's cosmetics brand, "RAffINE", was widely recognized among consumers in Japan as representing the cosmetics brand under which the demandant's products are sold, at the time of filing of an application for registration and at the time of upon the decision for registration of the Trademark.

Accordingly, the demandant's cosmetics brand, "RAffINE", falls under "a trademark which is well-known among consumers in Japan or abroad as that indicating goods or services pertaining to a business of another person" as stipulated in Article 4(1)(xix) of the Trademark Act.

B Level of similarity between the Trademark and the demandant's cosmetics brand,

"RAffINE"

As described in detail in (5)B above, it should be said that the Trademark is similar to the demandant's cosmetics brand, "RAffINE".

C "Unfair purposes" of the demandee

Specific cases in which "unfair purposes" are possible in connection with Article 4(1)(xix) of the Trademark Act include the "case in which an application is filed for a trademark which is identical or similar to a well-known trademark in Japan, without going so far as to pose the risk of creating confusion of source but with the purpose of diluting the function of showing the source or of defamation", and "other cases in which an application is filed for a well-known trademark in Japan or overseas with unfair purposes that are in violation of the principles of good faith" (Exhibit A No. 14).

In this regard, the demandee received on September 29, 2011, which is prior to the filing of the application for the Trademark, a warning letter from the demandant in a content-certified mail (hereinafter referred to as "Warning Letter") (Exhibit A No. 9). The Warning Letter indicates that the demandee places its trademark, which contains the letters, "Raffine", on gel-type cosmetics products which the demandee sells in shops and in its mail-order business, and that the said act falls under violation of the rights held by the demandant for Cited Trademarks. The same Warning Letter requests for discontinuation of the sale and advertisement of the products concerned. In light of these facts, it is obvious that the demandee was already aware of the existence of the Cited Trademarks prior to filing the application for the Trademark. Furthermore, in light of the background that the demandee filed the application for the Trademark, which contains the letters, "Raffine", by designating the goods, "cosmetics", in spite of receiving the Warning Letter, one can presume that the demandee had focused on the point that the demandant's cosmetics brand, "RAffINE", was widely recognized among consumers, and that the demandee had the purpose of making unfair profits by taking advantage of the fame and prominence of the demandant's cosmetics brand. Furthermore, it is highly likely that the demandee filed the application for the Trademark with the purpose of diluting the power which the demandant's cosmetics brand has of attracting customers as well as of diluting the distinctiveness of the demandant's cosmetics brand, or with the purpose of interfering with the demandant's business.

Accordingly, it should be said that the use of the Trademark by the demandee for the designated goods, "cosmetics", falls under the "use for unfair purposes" as stipulated in Article 4(1)(xix). It is needless to mention that these unfair purposes existed at the time of the filing of the application as well as at the time of the decision for registration for the Trademark.

D As described above, the Trademark falls under Article 4(1)(xix) of Trademark Act because it is similar to, and has the same pronunciation and meaning as, the demandant's trademark for its cosmetics brand, "RAffINE", which was widely recognized among consumers in Japan as representing the source of the products pertaining to the demandant's business at the time of filing the application as well as at the time of the decision for registration for the Trademark, and because use of the Trademark is therefore based on unfair purposes.

(7) Article 4(1)(vii) of Trademark Act

A Interpretation of a "trademark liable contravention on public order or morality"

Article 4(1)(vii) of Trademark Act stipulates that a trademark that liable contravention on public order or morality cannot be granted registration. If the process of filing an application for a trademark involves socially unacceptable circumstances, or if it is obvious that the application was filed with unfair purposes, approval of a trademark registration which was obtained as a result in spite of such circumstances is determined as liable contravention on public order or morality, including disrupting the distribution order of the product, and such trademark is subjected to elimination under Article 4(1)(vii) of Trademark Act.

B Applicability of the Trademark under Article 4(1)(vii) of Trademark Act

On November 10, 2011, which is one day before the demandee filed the application for the Trademark, the demandee received a notice from the JPO for its Trademark Application No. 2011-55832 concerning submission of publications and the like (Exhibit A No. 10). The notice indicated Cited Trademarks as references in the reasons for refusal of the above trademark application pursuant to Article 4(1)(xi) of Trademark Act, and at a later date, a notice of reasons for refusal was issued indicating the same content (Exhibit A No. 16). The trademark of the above trademark application is a two-tier configuration with the alphabet characters, "Nail Raffine", written horizontally in the upper section and the katakana characters, "ネイルラフィネ (nail raffine)", written horizontally in the lower section, and thus contains the same letters, "Raffine", as the Trademark. The designated goods include "cosmetics" of Class No.3.

More specifically, the demandee filed the application for the Trademark on November 11, 2011, which is the next day of the day when the demandee became aware of the possibility that the above trademark application may be refused due to the reference to the Cited Trademarks. In other words, it is obvious that the demandee was aware of the existence of the Cited Trademarks when filing the application for the Trademark.

Also, the demandee sells "cosmetics", which are covered by the designated goods of the Trademark, by using a trademark (banner advertising) that is similar to the Trademark. The third section of this banner advertising has the writing, "ラフィネの通販サイト (raffine's online shopping site)", and by taking into consideration the fact that the letter part, "通販サイト (online shopping site)", merely indicates the quality of service being provided, it is natural to consider that the general consumer will acknowledge and expect the character part, "ラフィネ (raffine)", as having some relevance to the demandant's cosmetics brand, "RAffINE", of the present trial. In other words, the demandee's act of using a trademark, which is similar to the Trademark, in the designated goods, "cosmetics", may create misunderstanding and confusion with the demandant's cosmetics brand, and since it can be presumed that there was the purpose of luring the customers of the demandant's cosmetics brand to the demandee's own products in order to make unfair profits, it is believed that such use constitutes unfair use of a trademark.

Furthermore, the demandee took actions, as described in the two cases below, which created misunderstanding and confusion with the products which pertain to the business of another person.

In the first case involving Trademark Application No. 2009-58231, the demandee filed an application for a trademark having a two-tier configuration with the alphabet characters, "Raffine", written horizontally in the upper section and the

katakana characters, "ラフィネクラブ (raffine club)", in the lower section along with the alphabet characters, "Club", in italic, and with the designated goods covering "cosmetics" of Class No.3. A notice of reasons for refusal under Article 4(1)(xi) of Trademark Act was issued for this application. The demandee, in spite of indicating its intention to submit a written opinion by written statement, and receiving a request by the JPO to submit a written opinion, did not submit a written opinion in the end, and thus the decision of refusal was made final and binding for the application. During the application process, the demandee used the same trademark for cosmetics, and it is presumed that a series of acts involved therein were based on the purpose of prolonging the finalization of the decision of refusal. In addition, the demandee continued with the act of using the trademark, and the demandee stopped with such use only when the demandee received a warning based on the demandant's Cited Trademarks (Exhibit A No. 9).

The second case involves Trademark Application No. 2011-55832. Although the following overlaps with what is described at the beginning of this section, a notice of reasons for refusal under Article 4(1)(xi) of Trademark Act was issued for this trademark application, with reference to the demandant's Cited Trademarks. Like in the first case, the demandee expressed its intention to submit a written opinion by written statement to the JPO, and still continues to use the same trademark for cosmetics. While the decision of refusal has not been made for the trademark concerned, it can only be said that the demandee's use of the trademark concerned for the cosmetics is bound to create misunderstanding and confusion with the demandant's cosmetics brand.

As described in the two cases above, it is believed that the demandee's acts involving the filing of an application and the process that follows fall under unfair use of a trademark and create misunderstanding and confusion with the products which pertain to another person's business, and thus constitute disruption of the order of fair competition.

Furthermore, the act of filing the application for the Trademark was taken in order to obtain registration for the Trademark, which contains the letters, "Raffine", as an alternative to the case of refusal of Trademark Application No. 2011-55832. As such, the application for the Trademark was filed merely to escape the refusal of a trademark containing "Raffine", and thus the application process involves socially unacceptable circumstances. As described in (6) above, it is presumed that the demandee was aware of the existence of the demandant's cosmetics brand as well as the well-known and prominence thereof, and thus it is obvious that the act of filing the application for the Trademark was based on unfair purposes, with the full awareness of the social credibility and goodwill that are embodied in the demandant's trademark, and using the same for the demandee's own interests.

As such, it can be said that, if the Trademark remains registered in spite of such circumstances, there is liable contravention on public order or morality, including the distribution order of products.

Accordingly, it is believed that the Trademark is in violation of the order of fair competition and thus falls under Article 4(1)(vii) of Trademark Act as a "trademark liable contravention on public order or morality".

2 Rebuttal against a reply

(1) Violation of Article 4(1)(xi) of Trademark Act

The demandee claims in Written Reply that since Cited Trademarks only have the

meaning of "refined or sophisticated" and the Trademark generates the meaning of "refined or sophisticated expression, lifestyle, or manner of living", the Cited Trademarks and the Trademark are not similar in meaning, and that since the pronunciation generating from the Trademark is "*raffine-style*", the Cited Trademarks and the Trademark are not similar in pronunciation as well.

However, if the relevance in terms of the designated goods, "cosmetics", is taken into account, the impact of the meaning of the concept, "refined or sophisticated", given by the adjective, "Raffine", is important, and thus even with regard to the "refined or sophisticated expression, lifestyle, or manner of living" as claimed by the demandee, it cannot be said that any special meaning would be generated were it not for the aforementioned adjective part. It must be said that it is unreasonable to argue, by forcibly combining the adjective part with the noun, "style", which means "expression, lifestyle, or manner of living", and claiming that the Trademark subsequently gives an impression which is different from the Cited Trademarks, that the Trademark and the Cited Trademarks are not similar in meaning. Also, when the configuration of the Trademark is taken into account, it is highly likely that the general consumer focuses only on the letters, "Raffine", in the upper section, because of the line break between the upper section and lower section.

Furthermore, the demandee's subsidiary's homepage uses a banner advertising to guide site visitors to a shopping site (Exhibit B No. 7). In the shopping site, even when the screen configuration, in which the characters of "ラフィネ (raffine)" appear by themselves with high frequency, is taken into consideration, this is merely the demandee intentionally advertising its brand by making only the letter part, "ラフィネ (raffine)", stand out as an independent and objective indicator of source, and it is highly likely that the general consumer will, accordingly, focus only on the letter part, "Raffine".

As described above, the primary part of the Trademark is the letter part, "Raffine", in the upper section, and the Trademark is similar to Cited Trademarks in meaning, pronunciation, and appearance. As such, the Trademark falls under Article 4(1)(xi) of Trademark Act.

(2) Violation of Article 4(1)(xv) of Trademark Act

The demandee claims in Written Reply that there is no evidence to support that the demandant's cosmetics brand, "RAffINE", is in itself widely recognized by consumers.

However, it is evident as an empirical rule that, in the field of cosmetics, a brand name which is commonly borne by a group of products gives a strong impression to consumers and drives them to buy products. As such, each company in the cosmetics industry develops its products under a brand name which is shared by multiple products in order to increase the brand value for the product line, in an attempt to acquire customers, and the fact that the Cosmetics Marketing Directory (Exhibit A No. 11-5) separately indicates the share by brand names also makes it evident that a brand name gives a strong impression on consumers, and that the industry, too, regards brand names as important.

While the demandant also sells its products by giving the brand name, "RAffINE", commonly to multiple products (Exhibit A No. 11-2, Exhibits A No. 19 through A No. 21), it is evident as an empirical rule that a core product exists among a line of products bearing the shared brand name, that the brand name of the product line

becomes well-known as a result of the core product being widespread among consumers and gaining recognition. As such, it is only natural for the cosmetics brand, "RAffINE", to subsequently become well-known alongside the increase in the sales volume of the "ラフィネパーフェクトワン (raffine perfect one)", assuming that this is the core product within the demandant's cosmetics brand.

Also, although the demandee claims that the "demandant uses "ラフィネパーフェクトワン (raffine perfect one)" and "パーフェクトワン (perfect one)" with high frequency in recent, full-page newspaper advertisements but does not use "RAffINE" in itself", such claim made by the demandee is not true because there is a full-paper newspaper advertisement of a picture in which the trademark, "RAffINE", is used alone (Exhibit B No. 4).

As described above, the demandee's claim that the demandant does not use its registered trademark on its products is improper, and as indicated in Exhibit A No. 11, it should be considered that the demandant's cosmetics brand, "RAffINE", is widely recognized among consumers. As such, the Trademark falls under Article 4(1)(xv) of Trademark Act.

(3) Violation of Article 4(1)(xix) of Trademark Act

The demandee claims that, based on the presence of prior trademarks which existed before the Warning Letter and which are held by the demandee for the designated goods of "cosmetics" (Trademark Registration No. 5364255 (Exhibit B No. 1), Trademark Registration No. 5364256 (Exhibit B No. 2), and Trademark Registration No. 5368467 (Exhibit B No. 3); hereinafter these trademark registrations are collectively referred to as "Prior Trademarks"), the Trademark was not used with "unfair purposes".

However, even if Prior Trademarks existed from before the Warning Letter, the subject of the determination under Article 4(1)(xix) of Trademark Act is the Trademark, and also from the fact that the demandee itself, in the Written Reply to the Warning Letter, makes it clear that the demandee no longer uses the trademark, "RaffineClub/ラフィネクラブ (raffine club)", it can be surmised that the demandee took advantage of the publicity of the demandant's cosmetics brand in order to obtain unfair profits, diluted the power of the demandant's cosmetics brand to attract customers and the distinctiveness of the demandant's cosmetics brand, or interfered with the demandant's business, all of which, among others, constitute sufficient motivation to the point of suggesting that the demandee had unfair profits, and thus the Trademark falls under Article 4(1)(xix) of Trademark Act.

(4) Violation of Article 4(1)(vii) of Trademark Act

The demandee claims that since use of the demandee's trademark (banner advertising) does not cause misunderstanding or confusion, it does not constitute unfair use, and furthermore, since there is no mention of cosmetics on the demandee's homepage, it is unlikely that a purchaser would associate the demandee's homepage with a trademark that is related to cosmetics.

However, the demandee sells cosmetics (Exhibit A No. 22) on an online shopping site (Exhibit B No. 7) which is linked by the banner advertising, and also from the fact that the demandee has acquired trademark registration with the designated goods covering cosmetics (Exhibits B No. 1 and B No. 2), it is evident that the demandee had the intention of using the trademark on cosmetics. When these facts are taken into account, it is natural for a purchaser to believe that the demandee

handles cosmetics. In the online shopping site to which the banner advertising is linked, the highlighted characters, "ラフィネ (raffine)", are used alone, and since the screen configuration shows only the characters, "ラフィネ (raffine)", with high frequency, it is only natural that consumers would recognize the website as being somehow related to "ラフィネ (raffine)" and recognizing the website as being an online shopping site related to the demandant's cosmetics brand, "RAffINE".
Furthermore, the fact that the demandee, while acknowledging that it cannot use the letters, "Raffine", alone, still filed an application for a trademark it uses by leaving the letter part, "Raffine", as part of the trademark, and continues to use the trademark, will subsequently lead to the use of credibility in business, which is embodied in the demandant's trademark. As such, it cannot be denied that the demandee's filing of the application was based on unfair purposes.
Accordingly, the demandee's claim that the Trademark does not violate the order of fair competition is improper, and thus the Trademark falls under Article 4(1)(vii) of Trademark Act.

3 Closing
As described above, since the Trademark falls under Article 4(1)(xi), Article 4(1)(xv), Article 4(1)(xix), and Article 4(1)(vii) of the Trademark Act in regards to the designated goods, "cosmetics", of Class No.3, the registration of the Trademark should be invalidated pursuant to Article 46(1)(i) of the Trademark Act.

No. 4 The demandee's reply
The demandee replied requesting a trial decision to the effect that the demand for trial of the case is groundless and that the costs in connection with the trial shall be borne by the demandant, summarized and mentioned reasons for request as follows, and submitted Exhibits B No. 1 through B No. 8 (including branch numbers) as means of evidence.
1 Violation of Article 4(1)(xi) of Trademark Act
The demandant claims that, in the Trademark, which has a two-tier configuration of the letters, "Raffine" and "Style", with the letter part, "Style", having no special meaning in relation to the designated goods, "cosmetics", the upper section, "Raffine", constitutes the primary part of the Trademark, and that this primary part is similar to Cited Trademarks in pronunciation, meaning, and appearance.

However, as the demandant, too, points out, the letters, "Raffine", come from a French word meaning "refined or sophisticated", and the letters, "Style", come from a word meaning "method of expression, lifestyle, or manner of living", among others. When these two terms are combined to create the letters, "Raffine Style", they imply the meaning of "refined or sophisticated expression, lifestyle, or manner of living", causing an onlooker to have a certain meaning upon viewing the letters. Furthermore, this meaning is not at all foreign to the designated goods, "cosmetics". In the case of the Cited Trademarks, which consist of merely the letters, "RAFFINE", they only have the meaning of "refined or sophisticated". As such, if such trademark is used for the designated goods, "cosmetics", then it can only generate the meaning of "refined and sophisticated cosmetics" to an onlooker

who views the mark. On the other hand, when the Trademark is used for the designated goods, "cosmetics", it conjures images of "refined or sophisticated expression, lifestyle, or manner of living", and gives the impression that, compared to the use of only the letters, "Raffine", the mark contributes to the style of the whole life instead of being confined to products such as cosmetics themselves. As such, it should be said that the Trademark is not similar to the Cited Trademarks in meaning.

Combined with the non-similarity of meanings, if the letter part of the Trademark were to consist of two-tier character strings, the Trademark is still well-organized as a whole, and can be viewed in a unified manner. As such, the pronunciation generating from the trademark is "*raffine-style*", and it should be said the Trademark hardly has the pronunciation, "*raffine*", with a focus placed only on the part, "Raffine". In commercial transactions, it is commonsensical to apply the pronunciation, "*raffine-style*", rather than "*raffine*", and thus the Trademark is not similar to Cited Trademarks even in pronunciation, and as for the appearance, the Trademark is obviously not similar to the Cited Trademarks at first glance.

As described above, the Trademark is not similar to Cited Trademarks, and Article 4(1)(xi) of Trademark Act is not applicable.

The demandee owns Prior Trademarks in addition to the Trademark, and each of the applications for the Cited Trademarks was filed after the demandee's Prior Trademarks. The Cited Trademarks were granted registration in spite of the existence of the Prior Trademarks, and this is an indication of the judgment of non-similarity between the parts, "Raffine Style" and "RAFFINE". If, as the demandant claims, the letter part, "Style", does not have distinctiveness, the Cited Trademarks should have been refused based on the judgment of similarity with Prior Trademarks. Instead, however, the unified configuration of "Raffine Style" generate a meaning and pronunciation that are different from those of "RAFFINE". The Trademark and Prior Trademark 2 (Exhibit B No. 2) are different from each other in that the former consists of a one-tier character string and the latter consists of two-tier character strings. Under generally accepted perspective, however, the two trademarks should be regarded as the same, which an onlooker would view as well-organized and unified marks, and the pronunciation generating from the marks is still "*raffine-style*".

Even in this regard, the Trademark is not similar to Cited Trademarks, and thus Article 4(1)(xi) of Trademark Act is not applicable.

2 Violation of Article 4(1)(xv) of Trademark Act

The demandant's claim is based on the precondition that the Trademark and the Cited Trademarks are similar. As described above, however, it is clear that the Trademark and the Cited Trademarks are not similar to each other. As such, in the case where the above precondition is not established, the demandant's claim is groundless.

Also, the demandant claims that the demandant's cosmetics brand, "RAffINE", is widely recognized among consumers, but there is no evidence to support the claim that the cosmetics brand, "RAffINE", in itself is widely recognized among consumers.

The demandant mostly uses the trademarks, "Perfect One/RAffINE" and "ラフィネパーフェクトワン (raffine perfect one)", and none of the demandant's trademarks consists of only the letters, "RAffINE" (Exhibit A No. 11-2), or the like. Also, when one looks at Yahoo and Rakuten shopping sites (Exhibit A No. 11-3), the sites contain only the product name, "ラフィネパーフェクトワン (raffine perfect one)", and there is no product bearing the name, "RAffINE", or other such name. The demandant claims that, in the cosmetic moisturizer division, the demandant's product is ranked third in the share by manufacturers, and second in the share by brands (Exhibit A No. 11-5). Descriptions on the Exhibit, however, indicate the product name, or brand, as "ラフィネパーフェクトワン (raffine perfect one)" instead of "RAffINE". As such, the award was given in the Rakuten shopping site for the brand name of "ラフィネパーフェクトワン (raffine perfect one)" instead of "RAffINE" (Exhibit A No. 11-6).

The trademark which is actually used by the demandant itself is "ラフィネパーフェクトワン (raffine perfect one)" instead of "RAffINE". The demandant uses the trademarks, "ラフィネパーフェクトワン (raffine perfect one)" and "パーフェクトワン (perfect one)", in recent full-page newspaper advertisements (Exhibits B No. 4-1 through B No. 4-4) as well.

A trademark which would be widely known among consumers as a result of such advertisement/sales activities is "ラフィネパーフェクトワン (raffine perfect one)", or rather, only the part, "パーフェクトワン (perfect one)". As such, the claim that the part, "RAffINE", has acquired fame in itself is unfounded.

In any case, since the Trademark and Cited Trademarks are not similar, the Trademark is obviously distinguishable in a place of commerce by traders and consumers from "RAffINE", which the demandant claims is the demandant's cosmetics brand, and there is no likelihood to cause a risk of confusion about the source.

Accordingly, the Trademark does not fall under Article 4(1)(xv) of Trademark Act.

3 Violation of Article 4(1)(xix) of Trademark Act

The demandant claims that, based on the Warning Letter (Exhibit A No. 9),

the demandee was obviously aware of the existence of the Cited Trademarks and the demandant's cosmetics brand, and that, for this reason, it is presumed that the demandee's act of using the Trademark on cosmetics is based on unfair purposes.

The Trademark, which is used by the demandee, and the Prior Trademark 2 are both not similar to the demandant's Cited Trademarks, nor to "RAffINE", which the demandant claims is the demandant's cosmetics brand.

In order to apply Article 4(1)(xix) of Trademark Act, the existence of "trademark which is well known among consumers in Japan or abroad as that indicating goods or services connected with another person's business" is necessary, but as already stated earlier, no evidence has been submitted to indicate that "RAffINE", which the demandant claims is the demandant's cosmetics brand, is in itself widely recognized among consumers.

The demandant claims that, based on the Warning Letter, the demandee was obviously aware of the existence of the Cited Trademarks and the demandant's cosmetics brand, and that, for this reason, the demandant's act of using the Trademark on cosmetics is based on unfair purposes. Now the question is, why does the mere fact that the demandee was aware of the existence of the Cited Trademarks and the demandant's cosmetics brand constitute the demandee's use of the Trademark based on "unfair purposes"? There is a wild leap of logic in this argument.

The demandee was granted registration for the Prior Trademarks before applications were filed for the Cited Trademarks. While it can be said that the Prior Trademark 2 is the same trademark as the Trademark under generally accepted perspective, the application for the Trademark was filed based on a new request for acquisition of right, and there was no "unfair purpose" involved.

The applications for Prior Trademarks were filed, and registration granted, at least one year before the date of the Warning Letter. The presumption that the use of the Trademark is based on "unfair purposes" because the demandee was aware of the demandant's Cited Trademarks and cosmetics brand based the above Warning Letter cannot be accepted.

Accordingly, Article 4(1)(xix) of Trademark Act is not applicable.

4 Article 4(1)(vii) of Trademark Act

(1) The demandant's claim is based on the precondition that the Trademark is similar to the demandant's Cited Trademark 3 and cosmetics brand, "RAffINE". First of all, however, this precondition is groundless as described above.

(2) The demandant claims that the application for the Trademark was filed on the next day of the date of notification on November 10, 2011 by the JPO concerning

submission of publications and the like (Exhibit A No. 10) for the Trademark Application No. 2011-55832 (Trademark "Nail Raffine/ネイルラフィネ (nail raffine); hereinafter simply referred to as 'Trademark Application No. 2011-55832'") filed by the demandee, and that the application for the Trademark was filed with the knowledge of the existence of the Cited Trademarks indicated on the notice.

The notification concerning submission of publications and the like (Exhibit A No. 10) is merely a notice informing the recipient that information has been provided by way of a document for submission of publications and the like, and the content of the publications and the like having been submitted remains unknown until a request is made for viewing the content. The demandee requested for viewing the content on the "date of request for viewing: January 23, 2012", as indicated on page 1 of Exhibit A No. 10, which is after the date of delivery of a notice of reasons for refusal, December 22, 2011.

The fact that the date of filing the application for the Trademark happens to be the "next day" of the above notification concerning submission of publications and the like for the Trademark Application No. 2011-55832 is merely coincidental. The application for the Trademark was not filed with the knowledge of the Cited Trademarks which provide basis for refusal of the above trademark application.

From the beginning, the demandee has owned Prior Trademarks for which applications were filed and registration granted before the demandant's Cited Trademarks. The Trademark is recognized as the same as the Prior Trademark 2 under generally accepted perspective, and in order to make sure that a right is granted for this manner of use of a trademark, the application for the Trademark was filed by designating Class No.3, among others, and registration was granted. There was no intention of unfair use involved.

(3) The demandant claims that the demandee's act of using a trademark (banner advertising) that is similar to the Trademark on cosmetics as well as the processes of filing other applications in the past suggest that the demandee is believed to be involved in the unfair use of a trademark with the intention of causing misunderstanding and confusion with the products which pertain to another person's business, thereby disrupting the order of fair competition.

The demandant demanded for a trial over Prior Trademark 2 pursuant to the provisions of Article 53 of Trademark Act, and made basically the same claims (Revocation 2012-300347). Exhibits B No. 6 and B No. 7 are copies of Exhibits A No. 5 and A No. 6 which the demandant submitted during a trial for revocation of trademark registration (Revocation 2012-300347). Exhibit B No. 6 indicates a homepage of BODYWORK Co., Ltd., a subsidiary under the demandee's control (http://www.bodywork.co.jp/). The homepage uses a banner advertisement, as shown in Exhibit B No. 6, with a link to the shopping site shown in Exhibit B No. 7. While the date of creation of Exhibit B No. 6 is unknown because there is no mention of the date of its acquisition, the most recent date of the "Topics" indicated on the site shows the date, April 12, 2012, suggesting that the homepage was created around that time. At the current moment, the Trademark and the Prior Trademark 2 which are included in the banner dated April 2012 (Exhibit B No. 6) and the banner dated July 2012 (Exhibit B No. 8), are not similar to the Cited Trademarks 1 to 3.

The demandant claims that, in light of the fact that the third tier of the banner advertising indicates "ラフィネの通販サイト (raffine's online shopping site)",

and the fact that the letter part, "通販サイト (online shopping site)", merely indicates the quality of service, it is natural that the general consumer recognizes the part, "ラフィネ (raffine)", as referring to products that are related to the demandant's cosmetics brand, "RAffINE", and furthermore, that it is natural to arouse expectations for products that are related to the demandant's cosmetics brand, "RAffINE".

However, there is no mention of cosmetics anywhere on the homepage shown in Exhibit B No. 6 (nor in Exhibit B No. 8), and even if a purchaser may wander into this homepage, there is nothing on the homepage to conjure images of products that are related to cosmetics.

Exhibits B No. 6 and B No. 8 indicate the top page of the demandee's subsidiary (BODYWORK Co., Ltd.). As the words, "ハートフルリラクゼーション (heartful relaxation)", indicated therein suggest, the trademark user (BODYWORK Co., Ltd.) provides services such as reflexology, body care, and massage. The brand, "Raffine/ラフィネ (raffine)", has already been granted registration since 2000, and has become widely known. Under the same brand, the demandee, as the parent company of BODYWORK Co., Ltd. also provides teaching on reflexology, body care, and massage, among other things, and holds the trademark, "Raffine/ラフィネ (raffine)", as well as a number of related trademark registrations.

The aforementioned BODYWORK Co., Ltd. has its shop, "ラフィネ (raffine)", operating nationwide, and the shop is widely known in the field of relaxation massage. This fact is easily revealed by an Internet search. As such, when one enters the company's homepage (Exhibits B No. 6 and B No. 8), it is natural for the person to immediately realize that the "ラフィネの通販サイト (raffine's online shopping site)", as per the banner advertising, is a shopping site operated by the massage and relaxation salon, "ラフィネ (raffine)", and to understand that the name of the shopping site is "Raffine Style" as per the banner advertising. In fact, when one clicks on the banner advertising, the person is led to the shopping site of ラフィネスタイル (raffine style) as shown in Exhibit B No. 7. There is nothing to cause the misunderstanding that the name of the shopping site is "ラフィネ (raffine)".

In regards to whether or not the demandant's cosmetics brand, "RAffINE", has well-known and prominent in itself, no evidence has been submitted, as described above. It should be noted at least, however, that the Trademark did not take advantage of the demandant's cosmetics brand, "RAffINE". In order to operate the brand, "Raffine", which the demandee had built over ten years, into a mail-order business, the demandee chose a trademark which would not be in conflict with prior trademark registrations (the Trademark and other trademarks for the brand, "Raffine Style"). There was no intention of diluting the Cited Trademarks or the demandant's cosmetics brand, or of interfering with the demandant's business, and the use was not based on unfair purposes.

(4) The demandant states various matters concerning the processes of the demandee's previous applications, namely Trademark Application No. 2009-58231 and Trademark Application No. 2011-55832, but these matters are not relevant to the Trademark (Exhibit B No. 5).

(5) The demandant claims that the demandee's act of filing the application for the Trademark was intended to acquire a right for the Trademark, which contains the

letters, "Raffine", as an alternative to the case of refusal of the Trademark Application No. 2011-55832, and that the application process involves socially unacceptable circumstances.

As long as the demandant's Cited Trademarks and the Prior Trademark, "ら・フィネ (la fine)/LA •FINE" (Trademark Registration No. 4753896) exist, the registration of the Trademark does not guarantee the sole use of the letters, "Raffine". Although the demandant makes a claim as to the acquisition of the right as an alternative to the case of refusal, what, if any, can be used alternatively? Registration of the Trademark does not necessarily mean that the trademark, "Nail Raffine/ネイルラフィネ (nail raffine)", can be used as well. It is lawful to use a trademark which, in its entirety, is not similar to the Cited Trademarks. Use of only the letter part, "Raffine", creates obvious similarity with the Cited Trademarks, and thus this does not work as an alternative from the beginning. The demandant's claim is nonsensical.

An attitude like that of the demandant, of trying to eliminate a trademark for the mere reason that it has the letters, "RAFFINE", on the basis of the existence of Cited Trademarks such as "RAFFINE", in spite of the fact that there is obviously no similarity when the trademarks are seen in their entirety, is nothing but abusive use of right, and is therefore against the order of fair competition. If the demandant continues to act in this manner, the demandant's Cited Trademarks, rather than the Trademark, would fall under the "a trademark which is likely to cause damage to public order or morality".

In any case, the Trademark does not fall under Article 4(1)(vii) of Trademark Act.

5 Closing

As described above, the Trademark is not similar to any of the Cited Trademarks, and does not fall under Article 4(1)(xi) of Trademark Act. Also, the Trademark does not fall under any of Article 4(1)(xv), Article 4(1)(xix), and Article 4(1)(vii) of Trademark Act.

No. 5 Judgment by the body

1 Applicability of Article 4(1)(xi) of the Trademark Act

(1) Configuration of the Trademark

As indicated in Attachment 1, the Trademark has the configuration of the letters, "Raffine" and "Style", written in green in two tiers (hereinafter referred to as "Raffine/Style"), with the figure of a circle, in lime green, which is positioned on the right side of the "Style" and which has the letters, "WE LOVE HEARTFUL RELAXATION", written in green along the inner edge of the circle, and has the design of four leaves or petals in green (hereinafter referred to as "Four-Leaf Mark") positioned at the center. The letters, "Raffine/Style", are written in the same font, and the writing is significantly larger than that of the letters, "WE LOVE HEARTFUL RELAXATION", in the Four-Leaf Mark. As such, it is recognized that the parts of the Trademark that attract attention are the letters, "Raffine/Style", and the Four-Leaf Mark, which are then recognized as a whole by traders and consumers. Since the above letters written in the Four-Leaf Mark are very small in themselves,

it is rather difficult for traders and consumers to recognize them.

(2) Configuration of Cited Trademarks

Cited Trademark 1 is a trademark consisting of the standard characters, "RAFFINE". Cited Trademark 2 is a trademark consisting of the standard letters, "RAffINE". Cited Trademark 3 is, as indicated in Attachment 2, a trademark consisting of the letters, "RAffINE", but the part, "ff", is written differently from the rest of the trademark, in a slightly designed font.

(3) Similarity of the Trademark and Cited Trademarks

The word, "Raffine", comes from a French adjective, "raffine" (the mark of acute accent is written above "e"; the same applies hereinafter), meaning "sophisticated, refined, elaborate" (refer to "APOLLO French-Japanese Dictionary" by Kadokawa). Since this word is not commonly known in Japan, it is acknowledged that for this reason, the appearances and pronunciations of "Raffine" and "ラフィネ (raffine)", rather than the meaning, are what gives a unique impression to traders and consumers.

On the other hand, the word, "Style", is an English noun meaning "approach, tradition, method, school, way, stance, attitude, state, presence, performance, look, form, style of writing, method of expression, model", among others (refer to "English-Japanese Dictionary for the General Reader" by Kenkyusha). When written in katakana characters as "スタイル (style)", it is widely used as a foreign derived word having meanings such as "appearance, presence, look, model, version" (refer to Kojien 6th edition: a Japanese dictionary published by Iwanami Shoten), and it is acknowledged that this word is a commonly known word in Japan.

As for the word, "Style", it is a well-known fact that this word is used in combination with specific trademarks, as in "XX Style", to give meanings such as "XX school" and "XX model". It is acknowledged that in such cases, the word is used to indicate the source of goods and services which are the same as the "XX" trademark.

Accordingly, the traders and consumers who come into contact with the Trademark recognize the Trademark as an indicator of source, with the part, "Raffine", mostly indicating the source of goods and services, and the part, "Style", only having meanings such as "... school" and "... model", thereby recognizing that the part, "Style", cannot be an indicator of source by itself. Subsequently, it is acknowledged that the Trademark is a trademark in which the part, "Raffine", is the main indicator of source.

As for the Four-Leaf Mark of the Trademark, in light of facts such as that the Four-Leaf Mark in itself is an ordinary design, thereby making it too weak as an

indicator of source, whereas the letter part inside the same Mark is written comparatively smaller than the letter part, "Raffine/Style", and the letter part being translated, originally, as "we love heartful relaxation" in Japanese, thereby not indicating any source of goods or services but rather, merely showing mostly the philosophy of the demandee's company or of its operation, it is reasonable to acknowledge that the Four-Leaf Mark is merely a figure trademark which is too weak in terms of its function as an indicator of source as a whole.

Then, when the part, "Raffine", of the Trademark is compared with Cited Trademarks, the Trademark and Cited Trademarks are different in terms of fonts and the places in which certain letters are capitalized. Still, both the Trademark and Cited Trademarks come from the same French word, "raffine", and given the same spelling used, the Trademark and Cited Trademarks are almost identical in this regard, and the Trademark and Cited Trademarks are also identical in that all of them generally produce the pronunciation, "*raffine*", when the letters are read as alphabets (it should be noted that the French word, "raffine", is pronounced, "*raffine*"). In that case, even in light of the fact that the word, "raffine", is not a commonly known word in Japan, and therefore does not necessarily produce any special meaning, it should be said that the Trademark and Cited Trademarks are almost identical.

Accordingly, it is acknowledged that the Cited Trademarks are, in regards to the parts which act as an indicator of source, almost identical in appearance and pronunciation to the Trademark, and are similar to the Trademark in their entirety as well.

(4) The demandee's allegation

The demandee claims that the Trademark and Cited Trademarks are not similar in meaning because, among other reasons, the part, "Raffine/Style", of the Trademark is, as a whole, arranged as a unity and can be observed in a unified manner, and because it, in its entirety, implies the meaning of "refined or sophisticated expression, lifestyle, or manner of living" and gives an onlooker certain meanings which seem to contribute to the style of the whole life, whereas in the case of Cited Trademarks, they have the meaning of "refined or sophisticated", so that when used for cosmetics, they give the idea of "refined and sophisticated cosmetics" to an onlooker. The demandee also claims that the Trademark and Cited Trademarks are different in pronunciation as well because the pronunciation produced from the Trademark is "*raffine-style*".

However, as already explained above, the word, "Raffine", being a word that is not commonly known in Japan, actually gives a unique impression to traders and consumers, causing it to be recognized as an indicator of source, and as for the word, "Style", it is often recognized as merely having the meaning of "... school" or "...

model" when used in combination with certain trademarks. The foregoing remains unchanged even when the part, "Style", is written in a unified manner like "XX Style", as in the case of the Trademark.

Accordingly, while the Trademark should be recognized as a whole trademark consisting of "Raffine/Style" and the Four-Leaf Mark, the part of the Trademark which has the function as a major indicator of source is the letter part, "Raffine", as described in (3) above, and the Trademark is, in regards to the part of the mark having the function of indicator of source, almost identical to Cited Trademarks in appearance and pronunciation.

(5) Summary

As described above, the Trademark is similar to Cited Trademarks, with the same designated goods of "cosmetics" in Class No.3, and thus falls under Article 4(1)(xi) of the Trademark Act.

2 Summary

As described above, since it is acknowledged that the registration of the Trademark is in violation of Article 4(1)(xi) of the Trademark Act in regards to designated goods, "cosmetics" of Class No.3 which pertain to the present trial, there is no need to even consider the other claims made by the demandant, and the registration of the Trademark shall be invalidated in regards to the above "cosmetics" pursuant to Article 46(1) of the Trademark Act.

Therefore, the trial decision shall be made as described in the conclusion.

March 25, 2014

Chief administrative judge: MURAKAMI, Terumi
Administrative judge: KAJIWARA, Yoshiko
Administrative judge: MORIYA, Tomohiro

Attachment 1 (The Trademark) (See original for colors)

Attachment 2 (Cited Trademark 3)