

## Appeal decision

Appeal No. 2013-8335

Gunma, Japan

Appellant

ASAMA SAKAGURA CO. LTD.

Saitama, Japan

Patent Attorney

TAKAHASHI, Kozo

The case of appeal against the examiner's decision of refusal Trademark Application No. 2012-32926 has resulted in the following appeal decision.

### Conclusion

The appeal of the case was groundless.

### Reason

#### 1 The trademark in the Application

The trademark in the Application consists of the standard characters of "浅間山", and the application for its registration was filed on April 24, 2012 by setting Class No. 32 "Beer, Cold beverages, Fruit juice, Vegetable juice for drinking, Hop extracts for making beer and Whey beverages" as the designated goods.

#### 2 Gist of reasons for refusal of the examiner's decision

The examiner's decision found and judged that "the trademark in the Application consists of the standard characters of "浅間山", while "浅間山 (Mt. Asama)" is one of famous mountains and a triple active volcano, extending over both Nagano and Gunma Prefectures which is designated as the Joshinetsukogen National Park, well-known as a sightseeing area as well as a climbing mountain. If, therefore, this is used for the designated goods, traders and consumers coming into contact with the trademark in the Application will only recognize that the goods are "goods produced and sold in areas around the Mt. Asama", and it is found to merely indicates the place

of production, place of sale and quality of goods, falling under Article 3(1)(iii) of the Trademark Act" and rejected the Application.

### 3 Judgment on the body

The trademark in the Application consists of the standard characters of "浅間山" as shown in the above item "1", while the characters refer to "a triple active volcano, extending over both Nagano and Gunma Prefectures" (the sixth edition of Kojien). The same active volcano has several routes of the climb, and sightseeing spots are scattered at its foot, and "Mt. Asama" is widely introduced as a famous sightseeing spot as follows.

On a homepage of the Karuizawa Tourism Association, in "Karuizawa" located on the Nagano Prefecture side at the south foot of "Mt. Asama", "Mt. Asama" is introduced as "Nature in Mt. Asama" in the column "knowing about Karuizawa"; on a website of "Tsumagoimura" located on the Gunma Prefecture side, flowers around "Mt. Asama" are introduced as "Flower News, Flower Picture Book, and Around Mt. Asama" in a column "Sightseeing in Tsumagoimura"; on a website of Komoro City in Nagano Prefecture where there are routes of the climb, "Mt. Asama" is introduced at the head of "Introduction of Main Sightseeing Spots" of "Komoro-shi Sightseeing Information"; and on a website of Komoro City, several sightseeing brochures prepared by Komoro City are placed, which contains a brochure of "The Joshinetsukogen National Park Asama range Climbing Mt. Asama" specialized in "Mt. Asama" region, which shows the fact that "Mt. Asama" is used as a sightseeing symbol in various areas.

For your reference, at a sightseeing spot, various souvenirs and special local products are sold, and in connection with the designated goods of the Application, "local beer", "mineral water", etc. taking advantage of characteristics of the region are generally sold, and also in the region around the aforementioned "Mt. Asama", it is found that local beer, mineral water, etc. are produced and sold as listed separately.

If, therefore, the Trademark in the Application is used for the designated goods, this is reasonably found to make recognize that the designated goods are produced or sold in "a region of Mt. Asama which is a volcano, extending over both Nagano and Gunma Prefectures" and the Trademark in the Application solely consists of a mark indicating the place of production and place of sale of goods in a common way, and thus falls under Article 3(1)(iii) of the Trademark Act.

The appellant alleges that "in view of the fact that many mountains having a name consisting of characters "Mt. Asama" exist in Japan; and many registered trademarks

consisting of names of existing mountains as marks exist also in designated goods in the Application, even if a name of a mountain is used, it shall not be directly recognized as the place of production and place of sale of goods, and even if the word "Mt. Asama" is used for designated goods of the Application, traders and consumers coming into contact with the trademark in the Application cannot especially specify "a famous mountain, a triple active volcano, extending over both Nagano and Gunma Prefectures, which is also designated as the Joshinetsukogen National Park and well-known as a sightseeing area as well as a climbing mountain", and can understand with difficulty that it indicates the place of production of the designated goods as a geographic name. Also in view of the actual trade condition that the appellant also registered the trademark "Mt. Asama" for Class No. 33 "Sake, Western liquor, Fruit wine, Chinese liquor", and has used this registered trademark for goods similar to the designate good of the Application, "beer" for about 20 years, the Trademark in the Application fully functions as a mark for distinguishing relevant products from others ".

As described above, however, the Trademark in the Application is reasonably found to make recognize "Mt. Asama which is an active volcano, extending over both Nagano and Gunma Prefectures", and it cannot be found that "Mt. Asama" in regions other than said region is directly understood as the place of production and place of sale of goods, for example it is used as a sightseeing spot. Moreover, the past registration examples listed by the appellant are the Trademark in the Application which are different cases in specific configuration of trademarks, etc., and a judgment timing of the appellant's registered trademarks and that of the Trademark in the Application are different. As listed separately, in view of the fact that local beer, mineral water, etc. are produced and sold in regions around Mt. Asama which is an active volcano, extending over both Nagano and Gunma Prefectures, the Trademark in the Application shall be reasonably judged as described above without relying upon these registration examples.

Therefore, any of the appellant's allegation cannot be accepted.

As described above, the examiner's decision made to refuse the application because the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, is reasonable and irrevocable.

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

October 23, 2013

Chief administrative judge: MURAKAMI, Terumi

Administrative judge: KAJIWARA, Yoshiko

Administrative judge: TAKAHASHI, Koji

#### Separate List

A. On the Shinetsu Sightseeing navigation website, under the title of "Canned local beer will be released by Suwa sake brewery with regional design" in "Tateshina, Yatsugatake and Suwa Sightseeing News", "Reijin Brewery (Suwa City) will release canned local beer with a unique brand for the first time. It has been selling only bottled beer, but extend lineup of goods to positively highlight its characteristics of "local beer made by a brewery", and will also introduce cans with regional design, "Zenkoji romance", "Asamayama romance" in addition to the existing "Suwa romance" to develop need in sightseeing spots ([http://www.shinetsu-navi.jp/2013/02/19\\_029998.php](http://www.shinetsu-navi.jp/2013/02/19_029998.php)).

B. On Rakuten Market website, under the title of "Natural Water in Okukaruizawa", it is stated that "'Natural Water in Okukaruizawa" is obtained in verdant Tsumagoi Kogen where mountains at altitude of 2,000 meters such as Mt. Asama, Adumayama (Adumayasan), Mt. Shirane famous as Japanese 100 famous mountains are aligned, and filled in unheated sterilized packs" (<http://item.rakuten.co.jp/heimat/101200/#101200>).

C. On a website of Miyotamachi Commerce and Industry Association, a product "Spring water containing iron in Mt. Asama" is as explained, "Miyotamachi Commerce and Industry Association utilized "Support fund for making energy originated from our region" in Nagano Prefecture in 2007 and developed water using water quality rich in iron in Mt. Asama" (<http://www.miyota.or.jp/mizu.html>).