

## Appeal decision

Appeal No. 2013-11560

Tokyo, Japan  
Appellant

BEAMS Co., Ltd.

Tokyo, Japan  
Patent Attorney

WADA, Shigenori

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2012-64876 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 is configured as indicated in Attachment was filed on August 9, 2012 by setting Class No. 25 "Garters; ankle garters; suspenders [braces]; waistbands; belts for clothing; clothes for water sports; and windsurfing shoes." as the designated goods, and the application for its registration as an application for trademark registration under the provisions of Article 10(1) of the Trademark Act related to Trademark Application No. 2012-20934 of which the application for its registration was filed on March 19, 2012.

#### 2 Cited Trademark

The registered trademarks cited in the reasons for refusal of the present application in the examiner's decision because the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act are as described in (1) to (3) below, and the trademark rights are still valid as of now.

(1) The Trademark Registration No. 1694056 (referred to as "Cited Trademark 1" below) consists of katakana characters "ライフストア (raifusutoa; life store)", and the application for its registration was filed on March 29, 1982. The trademark was registered on June 21, 1984 with designated goods of Class No. 21 which are as specified in the Trademark Registry. Thereafter, the renewal of duration of the trademark right was registered twice, and the designated goods' reclassification was registered on August 17, 2005 to set the designated goods to "Cuff links; and semi-wrought precious stones and their imitations." of Class No. 14, "Garters; ankle garters; suspenders; waistbands; and belts for clothing." of Class No. 25, and "Armband for holding sleeves; hair ornaments; and buttons and the like." of Class No. 26.

(2) The Trademark Registration No. 1749796 (referred to as "Cited Trademark 2" below) consists of katakana characters "ライフストア (raifusutoa; life store)", and the application for its registration was filed on March 29, 1982. The trademark was registered on February 27, 1985 with designated goods of Class No. 24 which are as specified in the Trademark Registry. Thereafter, the renewal of duration of the

trademark right was registered twice, and the designated goods' reclassification was registered on February 22, 2005 to set the designated goods to "Weight belts for scuba diving; wetsuits for scuba diving; inflatable swimming floats; protective helmets for sports; air tanks for scuba diving; swimming flutter board; and regulators for scuba diving." of Class No. 9, "Mountaineering ropes; and tents for mountaineering or camping." of Class No. 22, "Clothes for sports; and boots for sports other than "horse-riding boots"; and horse-riding boots." of Class No. 25, and "Sports equipment" of Class No. 28.

(3) The Trademark Registration No. 4923992 consists of horizontally written Alphabetic characters of "BEAMING", and the application for its registration was filed on June 8, 2005. The trademark was registered on January 27, 2006 with designated goods "Clothing; garters; ankle garters; suspenders [braces]; waistbands; belts for clothing; masquerade costumes; and clothes for sports." of Class No. 25.

### 3 Judgment by the body

#### (1) Regarding the trademark in the Application

As indicated in the Attachment, the trademark in the Application consists of two-tiered character strings including an Alphabetic character of "B" (two vertically long rhombic figures having difference sizes are arranged on the right side) and blue Alphabetic characters of "MING" with about half height of the Alphabetic character of "B" (displayed as "B MING" as omitting figure part below) in the upper string and red Alphabetic characters of "LIFE STORE" curved in an arc- like shape (including a gap of a half size between the Alphabetic characters of "LIFE" and "STORE") in the lower string. In the above configuration, the characters of "B MING" and the characters of "LIFE STORE" are visually and separately recognized since both characters have differences such as expression methods and sizes and a significant color difference between blue and red, and any special circumstances to always grasp and recognize that the characters are inseparable cannot be found. Therefore, it is reasonable to say that the two character parts independently serve as marks for distinguishing relevant products from others.

In addition, since the characters of "LIFE STORE" in the lower string are a combination of a word of "LIFE" and a word of "STORE" that are widely known as easy English words, it can be said that the characters of "LIFE STORE" in the lower string is a part that can be easily memorized by traders and consumers coming into contact with these.

Then, regarding the above configuration, it is reasonable to say that the traders and consumers coming into contact with the above characters may do business as recognizing the pronunciation and meaning resulting from the characters of "B MING" and "LIFE STORE". Accordingly, regarding the trademark in the Application, the entire characters of "B MING" and "LIFE STORE" give rise to the pronunciation of "bimingu-laihusutoa". In addition, the characters of "B MING" give rise to the pronunciation of "bimingu", and the characters of "LIFE STORE" give rise to the pronunciation of "raifusutoa".

Then, since the characters of "B MING" in the upper string are recognized as a kind of coined word having no specific meaning, the characters have no specific meaning.

Furthermore, since the characters of "LIFE STORE" in the lower string can be

recognized as a combination of the word "LIFE" that means "life" and the word "STORE" that means "shop", the characters of "LIFE STORE" have a meaning of "shop for life".

(2) Cited Trademarks 1 and 2

Since Cited Trademarks 1 and 2 consist of katakana characters "ライフストア (raifusutoa; life store)", it is obvious that Cited Trademarks 1 and 2 give rise to the pronunciation of "raifusutoa". Furthermore, since the characters can be recognized as the pronunciation of "LIFE STORE", that is, "raifusutoa" written in katakana, the characters have a meaning of "shop for life".

(3) Similarity between the trademark in the Application and Cited Trademarks 1 and 2

Since the appearances of the trademark in the Application and Cited Trademarks 1 and 2 are as described above, the entire appearances of both trademarks can be distinguished from each other.

Next, regarding the pronunciation, the pronunciation of "raifusutoa" resulting from the characters of "LIFE STORE" in the trademark in the Application is the same as the pronunciations of "raifusutoa" resulted from Cited Trademarks 1 and 2.

Furthermore, regarding the meaning, the meaning of "shop for life" resulted from the characters of "LIFE STORE" in the trademark in the Application is the same as the meaning of "shop for life" resulted from Cited Trademarks 1 and 2.

In this way, even though the trademark in the Application and Cited Trademarks 1 and 2 are different from each other in terms of the entire appearance, both trademarks have the pronunciation of "raifusutoa" and the meaning of "shop for life" in common. Therefore, when the appearance, the pronunciation, and the meanings are comprehensively determined, it is reasonable to say that both trademarks are similar to each other.

The designated goods of the trademark in the Application are the same or similar to the designated goods of Cited Trademarks 1 and 2.

Therefore, the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act.

(4) Appellant's allegation

The appellant alleges that "the word of "ライフストア (raifusutoa; life sutoa)", is widely used, especially, for names of retail and wholesale trade shops and trade names and business names of the companies in Japan. In the shop providing products of the designated goods of the trademark in the Application, the characters of "ライフストア (raifusutoa)" or "LIFE STORE" alone, which only give rise to the meaning of "shop for life", have little ability for distinguishing relevant products from others or cannot display the ability for distinguishing relevant products from others" and presents 16 web sites, etc. (Evidence A No. 7 and A No. 8).

However, in eight web sites of the presented 16 web sites, etc., the characters of "... ライフ (raifu; life)" and the characters of "ストア (sutoa; store)" are written in combination, for example, "カーライフストア (kaaraifusutoa; car life store)", "ファッションライフストア (fasshonraifusutoa; fashion life store)", "ナチュラルライフストア (nachuraruraifusutoa; natural life store)", "アウトドアライフストア (autodoaraifusutoa; outdoor life store)", "プライベートライフストア (puraibeetoraifusutoa; private life store)", "イーライフストア (iiraifusutoa; e-life store)", "ニューフードライフストアふじしろ (nyufuudoraifusutoa fujishiro; new

food life store FUJISHIRO)", and "ビューティーライフストアチャーリー (byuutiraifusutoa chaarii; beauty life store Charley". Therefore, in consideration of the above, regarding the designated goods of the present application, it cannot be said that the characters of "LIFE STORE" or "life store" alone have little ability for distinguishing relevant products from others or cannot display the ability for distinguishing relevant products from others.

In addition, according to the investigation by ex officio in the body, even if each of the word of "LIFE" and the word of "STORE" has a meaning, the characters of "LIFE STORE" in the configuration of the trademark in the Application are not generally used as a word displaying the quality of the product, etc. in the business in the field of the designated goods of the present application. Therefore, it is reasonable to say that the characters of "life store" or the characters of "LIFE STORE" do not display the quality of the product.

Accordingly, it cannot be said that the characters of "LIFE STORE" or "ライフストア (raifusutoa; life sutoa)" alone have little ability for distinguishing relevant products from others or cannot display the ability for distinguishing relevant products from others. Furthermore, Cited Trademarks consisting of the characters of "ライフストア (raifusutoa; life sutoa)" are still valid as of now as registered trademarks.

Accordingly, the allegation of the appellant cannot be accepted.

#### (5) Summary

As described above, the examiner's decision indicating that the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act is reasonable and irrevocable.

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

November 19, 2013

Chief administrative judge:	WATANABE, Kenji
Administrative judge:	MAEYAMA, Ruriko
Administrative judge:	NISHIDA, Yoshiko

Attachment (The trademark in the Application)



(See original for colors)