

## Appeal Decision

Appeal No. 2013-14191

Ibaraki, Japan

Appellant

SEKISHO CORPORATION

Ibaraki, Japan

Patent Attorney

NAKAGAWA, Kunio

The case of appeal against the examiner's decision of refusal Trademark Application No. 2012-71381 has resulted in the following appeal decision.

### Conclusion

The appeal of the case was groundless.

### Reason

#### No. 1 The trademark in the Application

The trademark in the Application is configured as indicated in Attachment 1. Its designated services belong to Class 37 and are described in the application. The application for registration was filed on September 4, 2012. Subsequently, on March 15, 2013 at the original examination, its designated services were amended to Class 37, "Repair or maintenance of office machines and equipment; repair or maintenance of electronic machines and apparatus; repair or maintenance of telephone apparatus; repair of radio receivers or television receivers; repair or maintenance of telecommunication machines and apparatus [other than telephone apparatus, radio receivers and television receivers]; repair or maintenance of consumer electric apparatus; repair or maintenance of electric motors; repair or maintenance of power distribution or control machines and apparatus; repair or maintenance of power generators."

#### No. 2 Gist of reasons for refusal the examiner's decision

The examiner's decision rejected the Application by making the following finding and judgment: "The trademark in the Application is composed of the characters 'ネットワークおまかせサポート (nettowahku omakase sapohto;

dependable network support)' written by a quite usual method. In the field where the designated services of the Application are handled, network-related services have been widely provided in recent years. The services include consultation with respect to the construction/setting of LAN or Internet and connection/setting of apparatus connected by a network line, and connection/setting services. In addition, in the field where the network-related services are provided, the character portion 'おまかせサポート (omakase sapohto; dependable support)' is used as indicating the customer support services such as the consultation and connection and setting services. Considering this, when the trademark in the Application is used in the designated services, it is simply found to indicate the quality (content) of the services using a usual method, for the services are 'to provide the customer support services as to the network-related content.' Therefore, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act. If the trademark is used for the services other than that mentioned above, the trademark falls under Article 4(1)(xvi) of the Trademark Act, because it may mislead quality of the services. "

### No. 3 Judgment by the body

#### 1 Regarding Article 3(1)(iii) of the Trademark Act

As shown in attachment 1, the trademark in the Application is composed of the gray-shadowed, white-trimmed red characters "ネットワークおまかせサポート (nettowahku omakase sapohto; dependable network support)." The characters "ネットワーク (nettowahku; network)" in the configuration is well known as an abridged term of "computer network" which means "connecting one or more computers via a communication line to enable data to be sent and received."

Additionally, the field where the designated services of the Application are handled also includes the services of repair or maintenance of electronic machines and apparatus as well as telecommunication machines and apparatus, connected to a computer network such as the Internet. In the field, the support services as to a fault location and a problem of the computer network are generally referred to as the "ネットワークサポート (nettowahku sapohto)."

Further, the characters "おまかせサポート (omakase sapohto)" are also commonly used as indicating the support services, such as the computer network-related consultation and the connection and setting services, which a customer requests others to perform and about which the customer does not make any determination/choice.

The above circumstances can also be understood from the Internet information

shown in attachment 2.

As described so far, judging from the fact that the terms, "ネットワークサポート (nettowahku sapohto)" and "おまかせサポート (omakase sapohto)," are commonly used, it is reasonable to understand the trademark in the Application which is composed of the characters "ネットワークおまかせサポート (nettowahku omakase sapohto)" as indicating the support services, such as the computer network-related consultation and the connection and setting services, which a customer requests others to perform and about which the customer does not make any determination/choice.

Based on the above understanding, even though the trademark in the Application is used for, e.g., "repair or maintenance of electronic machines and apparatus, telephone apparatus, radio receivers or television receivers and telecommunication machines and apparatus [other than telephone apparatus, radio receivers and television receivers] relating to computer networks" in its designated services, the traders and consumers who come across the trademark simply recognize or understand that it indicates the "support services of repair or maintenance of electronic machines and apparatus and telecommunication machines and apparatus relating computer network, which a customer requests others to perform and about which the customer does not make any determination/choice," namely, it indicates the quality of services. It should be said that the trademark in the Application cannot function as a sign for distinguishing its services from those of others.

Accordingly, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

## 2 Appellant's allegation

(1) Appellant alleges that "The trademark in the Application, "ネットワークおまかせサポート (nettowahku omakase sapohto)," is not commonly used in transactions. No fact that proves this is present, either. In addition, the trademark in the Application is an integral trademark and does not directly or concretely indicate the quality of the designated services of the trademark in the Application. It is hard to recognize that the trademark in the Application is generally understood as a trademark that concretely indicates the quality of specific services. The trademark in the Application can function as a sign for distinguishing its services from those of others. "

However, the fact of actual use cannot be necessarily required to determine whether or not the trademark falls under Article 3(1)(iii) of the Trademark Act. The

provision applies to the trademarks that indicate the quality of the services even though they can be said to be descriptive. Therefore, the determination of the present case is not affected by the fact that no example of use of the characters is found. Moreover, based on the circumstances of transaction in the field of the designated services in the Application, as described above in 1, it is reasonable to understand that the trademark in the Application is recognized by consumers as the terms that indicate the quality of the services. The trademark in the Application cannot function as the sign for distinguishing its services from those of others.

(2) Appellant cites registered examples and argues that the trademark in the Application should be registered since a number of trademarks similar to the trademark in the Application in configuration are registered.

However, the distinctive features of trademarks should be determined individually and concretely for each of their designated services in view of the respective configurations and transaction circumstances of the trademarks for which an application was filed. The determination of the present case should not be bound by the registered examples cited by the demandant.

Hence, none of the demandant's allegations can be adopted.

### 3 Summary

Accordingly, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act. The original decision that refused the present application is proper and may not be revoked.

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

January 20, 2014

Chief administrative judge:	IDE, Eiichiro
Administrative judge:	OGAWA, Kimie
Administrative judge:	NAITO, Junko

## Attachment 1

### The trademark in the Application



(See original for colors)

## Attachment 2

(1) Use of the characters "ネットワークサポート(nettowahku sapohto; network support)"

### A Website of "Oki Customer Adtech Co., Ltd."

The section of "ネットワークサポートサービス(nettowahku sapohto sahbisu; network support services)" states that "our 'ネットワークサポート(nettowahku sapohto)' consists of services such as network monitoring, diagnosis, assistance and performance management. These services provide support that makes it possible to find a fault and a problem in its early stage in our customers' network systems and quickly achieves the recovery of the fault/solves the problem."

([http://www.oca.co.jp/s\\_network/center/sc3.html](http://www.oca.co.jp/s_network/center/sc3.html))

### B Website of "Toho Tsushin Systems Inc."

The section of "ネットワークサポート(nettowahku sapohto)" states that "in the event of malfunctioning of an already used network apparatus, we try to find the cause of malfunction and recover from the malfunction."

([http://www.new-tts.co.jp/?page\\_id=1053](http://www.new-tts.co.jp/?page_id=1053))

### C Website of "fm Corporation"

Its business activities include "ネットワークサポート(nettowahku sapohto)" and the website states that "in response to our customers' business needs, our operations cover from infra systems to business operation systems and we consistently conduct a wide variety of operations from operation design to construction, planning and proposal, and improvement support operations. ... Our custom group conducts support help operations for PC/network users. ... We widely provide services ranging from network support to construction in the Kansai Area."

(<http://www.fmget.co.jp/service/network/>)

### D Website of "TERRASYSTEM Co., Ltd."

The section of "information on 'ネットワークサポート(nettowahku sapohto)'"

ネットワークサポート(nettowahku sapohto)' maintenance" states that "... we help the construction of a safer and more comfortable computer network environment. ... " and as the "main service activities," it lists "personal computer diagnosis service," "repair/complaint dispatch service," "consultation service for the improvement of business operations," and "comprehensive repair consultation service."

(<http://www.terra-system.jp/service/network.html>)

E Website of "Yayoi Co., Ltd."

The section of "PC ネットワークサポート(PC nettowahku sapohto)" states that "we take care of a wide variety of problems of information systems, such as the construction of a network, and personal computer trouble" and as the target and scope of support," it states "PC trouble advice /in the event of trouble such as inability to connect to the Internet and inability to receive mail, we support setting procedures," and "network construction advice/we check our customer's network environment and selects necessary hardware, and software PC and give advice.

(<http://www.yayoi-kk.co.jp/yss/service/concierge/pcsupport.html>)

F Website of "Plusway Co., Ltd."

The section of "PC ネットワークサポート(PC nettowahku sapohto)" states "IT concierge/services for utilizing IT by adding '+WEB (plus web)' to 'your services,' such as assistance to the introduction of a personal computer/mail management and file sharing."

(<http://www.plus-w.co.jp/network/>)

(2) Use of the characters "おまかせサポート(omakase sapohto; dependable support)"

A Website of "UQ communications Inc."

The section of "おまかせサポート(omakase sapohto)" states that "even in the event of trouble, our customers are free from stress! This is an optional service that allows our customers to be given even remote support" and as the "support activities/corresponding scope of the 'おまかせサポート(omakase sapohto)' (remote support)," it lists "personal computer/setting of a personal computer, initialization of a personal computer," "smartphone/smart pad/initial setting of a smartphone/smart pad," "Internet connection service/initial setting of the Internet connection service."

(<http://www.uqwimax.jp/service/price/option06.html>)

B Website of "NSK Inc."

The section of "おまかせサポート(omakase sapohto)" states that "our 'おまかせサポート(omakase sapohto)' relates to remote support services via the Internet. ... Our support staff directly operates our customer's personal computer to solve a

problem."

([http://www.nsk.ad.jp/n\\_support/12.html](http://www.nsk.ad.jp/n_support/12.html))

C Website of "Yokohama Cable Vision Inc."

As the "details of net visit support/task activities," the section of "YCV allows even a beginner of a personal computer to be free from stress!!/ 'おまかせサポート (omakase sapohto)" lists "basic setting of PC," "setting of a smartphone/tablet," "connection of a personal computer to a television tuner," "trouble investigation (every 30 minutes)," and "virus removal."

(<http://www.catv-yokohama.ne.jp/campaign/omaspo.php>)

D Website entitled "information with respect to the computerized clerk/ 'おまかせサポート (omakase sapohto)""

"As the details of 'おまかせサポート (omakase sapohto),' the website lists "1) dealing with an inquiry if our customer doesn't know the operation procedures, 2) finding the cause of/measures against the occurrence of a fault (requesting the manufacturer for maintenance\*), 3) finding the cause of/measures against damaged data, and system suspension, 4) survey of/advice on the storage capacity resulting from an increase in the amount of data, 5) providing computer-related information/giving advice on the computer-related information, 6) consultation associated with each of the above sections, and 7) consultation on raising the level of the system."

(<http://www.osas.co.jp/web/seihin/rrr/help/support.pdf>)

E Website of "KDDI CORPORATION"

The section of "dependable/stress-free, satisfactory support system/'おまかせサポート (omakase sapohto) (apartment course)" states as "おまかせ (omakase) 1" "visiting support for setting by our customer support staff/ ... even a beginner need not worry since our expert staff visits our customer's house and provides necessary services ranging from modem connection to setting a personal computer" and as "おまかせ (omakase) 2," it states "helping telephone support/ ... we answer your questions/inquiries about the apartment course by telephone."

(<http://www5.mediagalaxy.co.jp/dion/direct/ftth/kaketsuke/index.html>)