Trial decision

Invalidation No. 2013-890038

Tokyo, Japan
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The case of trial for invalidation of trademark registration for Trademark Registration No. 5506879 between the parties above has resulted in the following trial decision.

Conclusion

The demand for trial of the case was groundless.

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

Reason

No. 1 The Trademark

The trademark with Trademark Registration No. 5506879 (hereinafter referred to as "the Trademark") has the structure shown in Attachment (A). On February 6, 2012, the application of the Trademark was filed for registration. On June 12, 2012, decision of registration was made, and on July 13, 2012, registration of the trademark right was established for the designated services in Class 39 "truck transport."

No. 2 Cited Trademarks

1 The trademarks cited by demandant because the Trademark falls under Article 4(1)(xi) of the Trademark Act, are the three trademarks listed below, and they are still valid as of now. Also, these may be collectively hereinafter referred to as "Cited

Trademark."
(1) The trademark of Trademark Registration No. 4154926 (hereinafter referred to as "Cited Trademark 1") has the structure shown in Attachment (B). The application for its registration was filed on September 21, 1992 with alleges the application of "special provisions based on use" of Supplementary Provisions Article 5(1) of the Partial Amendment of the Trademark Act (the Act No. 65 of 1991) and the trademark was registered on June 12, 1998 for the designated services in Class 39 "transportation by a light motor vehicle."
(2) The trademark of Trademark Registration No. 4270230 (hereinafter referred to as "Cited Trademark 2") has the structure shown in Attachment (C). The application for its registration was filed on May 14, 1997 and the trademark was registered on May 7, 1999 for the designated goods and services in Class 9 "Floppy disks storing computer programs.", Class 35 "Providing information on diagnosis and guidance of franchisee management; providing information on organization, administration and management of franchisors.", and Class 39 "Providing road map information for vehicle transportation; providing information on transportation by vehicles; providing information on operation management of vehicles." After that, regarding the services of Class 35 and Class 39, the renewal of duration of the trademark right was registered on March 3, 2009.
(3) The trademark of Trademark Registration No. 5080364 (hereinafter referred to as "Cited Trademark 3") has the structure shown in Attachment (D). The application for its registration was filed on January 4, 2009 and the trademark was registered on September 28, 2009 for the designated services in Class 39 "Substitution/contracting or distribution of moving and providing information on those; railway transport; car transport; providing road and traffic information; vehicle-driving services; marine transport; air transport; packaging of goods; freight brokerage; cargo unloading; removal services; brokerage for rental, selling, purchasing or chartering of vessels; refloating of ships; ship piloting; tour conducting; escorting of travel tours; travel arrangement and reservation services, excluding those for lodging; warehousing services; temporary safekeeping of personal belongings; temporary storage of deliveries; gas supplying [distribution]; electricity distribution; water supplying [distribution]; heat supplying [distribution]; rental of warehouse space; parking services; providing toll roads; providing vessel mooring facilities; airport services; operating parking lots; rental of Loading-unloading machines and apparatus; car rental; rental of vessels; rental of wheelchairs; rental of bicycles; rental of aircraft; rental of mechanical parking systems; rental of packaging or wrapping machines and apparatus; rental of safes; rental of refrigerator freezers for household purposes; rental of freezers for household purposes; rental of freezing machines and apparatus; rental of gasoline station equipment, not for repair and maintenance of automobiles."
2 The trademarks cited by demandant because the Trademark falls under Article 4(1)(xv) and 4(1)(vii) of the Trademark Act, are the three trademarks consisting of characters "赤帽(Akabou /redcap)" used for "transportation by a light lorry" by the demandant (hereinafter, it may be referred to as the " '赤帽' trademark").

No. 3 The demandant's allegation
The demandant requested the trial decision that "the Trademark shall be invalidated. The costs in connection with the trial shall be borne by the demandee," summarized and mentioned reasons for request and rebuttal against a reply as follows,

and submitted Evidences A No. 1 to A No. 46 as means of evidence.

1 Gist of reasons

The Trademark was registered while violating Article 4(1)(xi), 4(1)(xv), and 4(1)(vii) of the Trademark Act, and therefore the registration should be invalidated under the provisions of Article 46(1) of the same Act.

2 Regarding Article 4(1)(xi)

(1) A In "Examination Guidelines for Trademarks" [the 10th revised edition] No. 3, 9, 6(6), edited by the patent office trademark division, it is clearly stated that "A combination of another person's registered trademark that is well known among consumers in respect of the designated goods or designated services and other characters or figures is, in principle, including those trademarks for which the description of the composition of appearance is well united or conceptually related, judged as similar to said another person's trademark, in principle."

Also, the Patent Office clearly acknowledges in the Patent Office electronic library (hereinafter, it may be referred to as "IPDL") that the characters "赤帽" of Cited Trademark are a prominent trademark (Evidence A No. 5).

Therefore, it is an obvious fact that the Trademark, even if the Trademark which is combined with extremely small characters of "舞妓マーク" and the figure thought to be made by designing Maiko (an apprentice Geisha), is similar to Cited Trademark which is the prominent trademark, according to the examination guidelines mentioned above.

B It is an obvious fact that the designated services of the Trademark, in the point that only "39B01" which is a similar group code given to services relating to transportation by vehicles is specified, are in conflict with the designated services of Cited Trademark including the same "39B01" in any designated service.

C Therefore, the Trademark, according to Cited Trademarks 1 to 3, based on Article 4(1)(xi) of the Trademark Act, is applicable to Article 46(1)(i) of the same Act is applied to the Trademark, and should be invalidated.

Also, there are many trial or appeal decision cases/judgement cases to which the examination guidelines mentioned above are applied (appeal or trial No. 1994-11093/the determination 1998 (Gyo-Ke) No. 106 by Tokyo High Court, appeal or trial No. 1994-17388, appeal or trial No. 2000-35424/the determination 2002 (Gyo-Ke) No. 152 by Tokyo High Court, the determination 2002 (Gyo-Ke) No. 195/No. 265/No. 383 by Tokyo High Court, 1998 (Wa) No. 375 by Kobe District Court/ the determination 1999 (Ne) No. 2815 by Osaka District Court, the determination 2000 (Gyo-ke) No. 461 by Tokyo High Court, and the determination 1980 (Gyo-ke) No. 21 by Tokyo High Court).

D As stated above, although the Trademark should be invalidated, even if these allegations are not accepted, the Trademark has the structure shown in Attachment (A), so that the characters of "京都" in the structure thereof are a so-called describing trademark referring to the place for providing the corresponding services, and the figure of Maiko or the characters of "舞妓マーク" are merely a trademark with extremely weak distinctiveness which also refers to Kyoto. Thus, it is reasonable to understand that the primary part of the Trademark is in a character part of "赤帽."

On the other hand, Cited Trademark is consisting of the characters of "赤帽."

Therefore, the Trademark and Cited Trademark, even if having slight difference

in their appearances, are similar trademarks which are common in the pronunciation of "Akabou" and the meaning of "赤帽グループ (Akabou gurupu; Redcap group)" and the like, and Class 39 "truck transport" is conflict with the designated serves of Cited trademark, so that together with well-known and prominent of Cited Trademark described below, the Trademark violates Article 4(1)(xi) of the Trademark Act.
(2) Obvious misunderstanding on how to read IPDL by the demandee (rebuttal against a reply)

The demandee alleges in a written reply that "because Evidence A No. 5 does not indicate that Cited Trademark is a well-known trademark or a prominent trademark. Namely, Trademark Registration No. 1353994 published in Evidence A No. 5, as published in the Patent Office IPDL/trademark application/registration information search (detailed screen) search result/copy (Evidence B No. 8), sets 'Class 9 Fire engines; cigar lighters for automobiles, Class 12 Automobiles and their parts and fittings, and Class 13 Tanks [weapons]' to the designated goods, so that it can be estimated that Trademark Registration No. 1353994 "赤帽" is acknowledged as a trademark widely recognized among consumers for each designated good and is published in 'Japanese Well-Known Trademarks.' Thus, Evidence A No. 5 does not support that Cited Trademark is a prominent trademark."

However, the fact that the trademark "赤帽" setting "Class 9 Fire engines; cigar lighters for automobiles, Class 12 Automobiles and their parts and fittings, and Class 13 Tanks [weapons]" to the designated goods is published in the Patent Office IPDL simply indicates that confusion in a narrow or broad sense may occur if the third party uses the trademark "赤帽" for fire engines, cigar lighters for automobiles and the like which are goods seemed to be unrelated ordinarily, as a result that "transportation by light motor vehicle" that is a business of the demandant became too prominent.

Therefore, "because Evidence A No. 5 does not indicate that Cited Trademark is a well-known trademark or a prominent trademark" is obvious misunderstanding on how to read the Patent Office IPDL.

Also, as a result, all documents of the demandee in the written reply 7. (3) (Pages 6 to 15) are unreasonable. Especially, appeal or trial No. 1997-9103 in Evidence B No. 7 is an appeal decision under different circumstances relating to the different trademark registration, and is unreasonable to be cited for the case.
(3) Others, rebuttal against a reply

The demandee alleges in a written reply that "as published in Evidence B No. 10 to B No. 16, all of three trial or appeal decision cases and four judgement cases in which the demandant '...refers to that as an evidence advantageous to themselves, and alleges/probes that the registration of the Trademark should be invalidated...' relate to similarity determination between word marks, and furthermore, the trial or appeal decision case about service marks (service marks) is only Evidence B No. 12, and all of the other trial or appeal decision cases and the judgement cases relate to similarity determination about good marks."

However, all of these trial or appeal decision cases are precedent cases adopting the same examination guideline as Examination Guidelines for Trademarks [the 10th revised edition] No. 3, 9, 5(6), and do not allege superficial points such as components of the trademark and goods/services. The theoretical construction adopted by these trial or appeal decision/judgement cases are further deeply alleged and referred. Therefore, the demandee's allegation is unreasonable. By the way, all of the trial or

appeal decision/judgement cases indicated here happen to be published as cases of Examination Guidelines for Trademarks [the 10th revised edition] No. 3, 9, 5(6), in "Explanation of Examination Guidelines for Trademarks seen by actual cases (the 6th edition)" (published by Japan Institute of invention and innovation, Kanji KUDO).

Furthermore, the demandee alleges that "it can be estimated that customers and the like can naturally recognize the figure drawing 'a front view of a Maiko having a baggage dedicated", characters of '舞妓マークの', and characters of '京都赤帽' as one entity, so that it cannot be thought at all that the customers and the like contacting with the trademark extract and recognize only the character part of 赤帽."

However, so as to avoid the overlap with the grounds of the demandee's allegation mentioned above, hereinafter, rebuttal statements will be made by referring to the latest judgement case relating to a composite trademark "2012 (Gyo-ke) No. 10338, a request to revocate the trial decision (rendition of decision on March 25, 2013)" (Evidence A No. 26).

Namely, as a doctrine of this ruling, it is described that "similarities of trademarks according to Article 4(1)(xi) of the Trademark Act should be considered as a whole by comprehensively considering impression, memory, association, and the like to traders and customers with appearance, meaning, pronunciation, and the like of the trademarks used for the same or similar good or services while taking into account the actual situation of trades relating to the goods or services (refer to Third petty bench of Supreme court Decision, February 27, 1968/ 22-2 Minshu 399), and concerning the composite trademarks combining a plurality of components, it should be said that it is not permitted to judge similarity of the trademarks themselves by extracting a part of the components of the trademark and comparing only this part with the trademark of the third party, except when it is acknowledged that the part gives the traders and the customers a strong and dominant impression as a mark identifying the source of goods or services or when the pronunciation or meaning as the mark identifying the source of goods or services are not raised from other parts (refer to First petty bench of Supreme court Decision, December 5, 1963/ 17-12 Minshu 1621, and Second petty bench of Supreme court Decision, September 10, 1993/ 47-7 Minshu 2009)."

Here, needless to say, since the characters of "赤帽" of Cited Trademark is prominent, it corresponds to "when it is acknowledged that the part gives the traders and the customers a strong and dominant impression as a mark identifying the source of goods or services."

Therefore, even with the latest court case, "赤帽" should be extracted from the Trademark, and the demandee's allegation described above is unreasonable.

3 Regarding Article 4(1)(xv) of the Trademark Act

(1) Publication in Industrial Property Digital Library (IPDL) "Japanese Well-Known Trademarks."

In Evidence A No. 5, the trademark consisting of the characters of "赤帽" is published as one of the prominent trademarks.

This simply becomes an apparently obvious evidence that the trademark "赤帽" obtains prominence in our country.

In the past appeal decision (Evidence A No. 6) in the Patent Office, the prominence of the trademark "赤帽" belonging to the National Akabou light motor vehicle transportation Federation of Cooperatives, which is the demandant, is

recognized.

As described above, without bringing a confusion theory in a broad sense that "A trademark being likely to cause confusion in connection with the goods or services pertaining to a business of another person" of Article 4(1)(xv) of the Trademark Act includes not only confusion in a narrow sense, but also confusion in a broad sense recalling relevance in goods or business (a court decision of "L'Air du Temps"/ the determination 1998 (Gyo-Hi) No. 85 by Supreme court), it is obvious that the Trademark causes the so-called confusion in a narrow sense with Cited Trademark.

Hence, the Trademark falls under Article 4(1)(xv) of the Trademark Act, therefore its registration should be invalidated under the provisions of Article 46(1)(i) of the same Act.

(2) Proof of well-known and prominent of the trademark "赤帽" by the demandant itself

A As the background that the trademark "赤帽" could receive the recognition of prominence mentioned above from the Patent Office, there has been the fact that the trademark "赤帽" has been continuously and extensively used as a symbol mark of an association of the demandant (National Akabou light motor vehicle transportation Federation of Cooperatives) under the company's efforts of business, from the beginning to the present.

Namely, Akabou was born as a light transportation business by light motor vehicles for the first time in Japan in May 1975 (namely, the founder of the business considered the organizing of cargo transportation business around December 1974, and on May 12, 1975, the mark of "赤帽" was attached to light motor vehicles and transportation business was started). In August, 1978, it was approved by the Ministry of Transport as a cooperative association union of national organizations, and under 51 cooperative associations (Evidence A No. 7) in the country, 15,000 Akabou vehicles (Evidence A No. 8) are active while exerting their mobility from narrow back alleys in cities to forest roads in mountainous regions. The main business of Akabou carries out emergency transportation, transportation of large packages, route delivery, charter represented by regular flights, delivery service received from corporate customers such as mail-order catalog, and transportation relating to moving work of single-persons and students living alone, large-scale work such as family moving.

Then, the trademark "赤帽" is used in vehicles, uniforms, certificate of receipt, leaflets, admission guides and the like used for moving, emergency transportation, regular delivery, and delivery of large cargo that cannot be sent by route flight.

B Regarding the extent of advertisement, first, as a precondition, it is obvious that the running-around of the 15,000 vehicles with the trademark "赤帽" all over the country itself causes a big advertisement effect.

Also, a total of 2,880,000 pieces of leaflets in 2010, and a total of 2,708,000 pieces of leaflets in 2011 were produced and distributed (Evidence A No. 9), its own homepage was opened to advertise on a grand scale. Also, the homepage of the demandant is subdivided so that advertising activities according to the situation of the region all over the country is enabled, like as Hokkaido block: 9 homepages, Tohoku block: 6 homepages, Kita Kanto Koushinetsu Block: 6 homepages, Tokyo area block: one homepage, Chubu block: 7 homepages, Kinki block: 6 homepages, Chugoku block: 5 homepages, Shikoku block: 4 homepages, and Kyushu block: 8 homepages (Evidence A No. 10).

In addition to that, by effectively utilizing so-called SNS whose advertising effectiveness has begun to have the power to substitute for existing media in recent years, active and extensive advertising is performed to every generations (Evidence A No. 11 to A No. 15).

As a result of that, when searching the word of "赤帽" by a major search engine, about 200,000 homepages are hit (Evidence A No. 16), we think that the prominence of the trademark "赤帽" should be recognized.

C As a cause of the trademark "赤帽" having acquired prominence, the fact that it does not just pursue profit, but conducts business activities under a firm philosophy, is mentioned as a major factor thereof. The philosophy is expressed in "greeting from chairman: Akabou is customer first principle" by Chairman NORIO KOBAYASHI (Evidence A No. 17).

Under the firm corporate philosophy as described above, the trademark "赤帽" which conducts advertisement activities using all kinds of media and has continued usage for 40 years, acquires extremely high evaluation also in the quality of providing the services. For example, it is selected as the top 13 of moving companies with a high degree of customer satisfaction in 2013 (Evidence A No. 18), and furthermore it acquires the 1st rank of the moving company cost performance division in the Oricon customer satisfaction ranking in 2018 (Evidence A No. 19).

D Also, about the company information of the claimant, it is as stated in the brochure "Guidance of Akabou business" (Evidence A No. 20).

(3) Rebuttal against a reply

The demandee, in a written reply, alleges that "in an appeal decision according to Appeal No. 1999-686 of Evidence A No. 6, ... it can be said that the recognition made before about 10 years from the date of filing does not support the fact that the trademark '赤帽' belonging to the demandant was a prominent trademark on February 6, 2012." Also, the demandee also alleges that "it can be acknowledged that the prominence of the trademark '赤帽' recognized in the appeal decision according to Appeal No. 1999-686 of Evidence A No. 6 was considerably diluted as of February 6, 2012 that is the filing date of the Trademark for which more than 10 years have passed since September 12, 2001 that is the date of the appeal decision."

However, as described in the section of "the extent of advertisement" in the written demand for trial, the running-around of the 15,000 vehicles with the trademark "赤帽" all over the country itself causes a big advertisement effect actually. Besides that, the prominence thereof is increased everyway by exposing to various media. Although the prominence was sufficiently described in the written demand for trial, further evidences are added to that (Evidence A No. 27 to A No. 29).

Also, Requests for interviews from various magazines / newspapers will come constantly as well as wanting to learn more about the uniqueness of the business model of the demandant and the energetic active state all over the country (Evidence A No. 30 to A No. 34).

Thus, in addition to receiving the interviews from various magazines, by the demandant conducting various activities, it was picked up by newspapers (Evidence A No. 35 to A No. 38).

Furthermore, the demandant does not only passively receive the interviews and the like as mentioned above, but also actively advertises voluntarily to improve the

prominence thereof (Evidence A No. 39 to A No. 40).

As described above, the running-around of the 15,000 vehicles with the trademark "赤帽" all over the country everyday itself causes a big advertisement effect actually, and in addition to the fact, together with the effects of such exposure to media such as televisions, newspapers, and magazines, the prominence of Cited Trademark of the demandant is increasingly improved. As a result of that, for example, "many applications of the license from minicar/plastic model traders were received. Among them, for example, applications of the license of Akabou vehicle are received from 'Choro Q' of Tomitech Co., Ltd that is a leading manufacturer of toys or AGATSUMA CO., LTD that is a major minicar trader, actual productization was done (Evidence A No. 41 and A No. 42), and Cited Trademark is affixed to any of them." Also, in picture books in the field of 'working vehicles' "especially children, the Akabou vehicles are published in MIKI HOUSE Co., Ltd or Kinnohoshi Co, Ltd.(Robust books for libraries) (Evidence A No. 43), Cited Trademark is drawn in any of them.

If such facts are accumulated, the prominence of Cited Trademark appears in specific numerical values. Namely, in "MAINICHI company awareness research, company will be evaluated 2009" issued by THE MAINICHI NEWSPAPERS, "Akabou" recorded from the last half of 80% range to the 90% range (Evidence A No. 44). Also, according to certificate on the occupancy rate of "Akabou vehicles," among business vehicles in our country, it indicates a high occupancy rate of 8% range to 10% range (Evidence A No. 45), and Cited Trademark is always attached to "Akabou vehicles." Furthermore, recent sales have also been at a high level of 14 billion yen to 10 billion yen (Evidence A No. 46).

As described above, Cited Trademark has increased its prominence in the past 10 years. It is so rude to the demandant to make the allegation from which no expertise can be felt at all, such as "dilution of prominence" merely by passage of time without inspecting the actual facts. In the past 10 years, the demandant made enormous corporate efforts and enhanced the prominence of Cited Trademark.

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

(1) The purpose of the Trademark Act is to prevent free-ride to well-known or prominent indication and dilution of the indication (Article 1 of the Trademark Act), so that as described above, considering comprehensively a point that those receiving the provision of the prominence of the trademark "赤帽" or services are made to be the same, if the Trademark is used for the designated goods, there is a possibility to recognize those as goods associated with "赤帽" that is the prominent trademark relating to the holder of trademark right of Cited Trademark (confusion in a narrow sense).

Also, even if not so, some sort of close business relationship is recalled, and there is a possibility to recognize that as if those are goods relating to a company associated with the organization to which the demandant belongs or goods relating to persons receiving some licenses (confusion in a broad sense).

Although Article 4(1)(vii) of the Trademark Act was prescribed to exclude registration of trademarks contrary to public order or morality, in these days, it is determined that trademarks whose application history has something that lacks social validity and which is hard to be accepted because admitting registration is contrary to the order planned by the Trademark Act corresponds to Article 4(1)(vii) of the Trademark Act (for example, a court decision of "DUCERAM" /issued by Tokyo High

Court on December 22, 1999). Recently, many cases of examination / trial or appeal cases whose content is the same are seen in judgment etc. by the Patent Office as well.

Therefore, if the Trademark is used for the designated goods thereof, it is obvious that it free-rides on the goodwill (credit on business) which has been constantly built up through the corporate efforts of the holder of the trademark right of Cited Trademark, and therefore the Trademark falls under Article 4(1)(vii) of the Trademark Act.

(2) Positive proof of free ride (Rebuttal against a reply)

A According to internal documents of the demandant, two brothers who bear the family name of "Kashiwa" joined the demandant union respectively on January 18, 1981, and January 24, 1981, then both of MITSUMI KASHIWA joining first, and TOSHIMASA KASHIWA joining later were expelled from the demandant union on July 24, 1983 (Evidence A No. 21).

Prior to this expulsion, the demandee/TOSHIMASA KASHIWA and MITSUMI KASHIWA confessed that they founded Incorporated company Kyoto Akabou (the demandee) in June, 1981, on the homepage opened by the demandee (Evidence A No. 22).

Then, according to certificate of full registry records of the demandee/TOSHIMASA KASHIWA had controlled the company of the demandee for a long period until resigning from the board of directors of the demandee on September 30, 2013 (Evidence A No. 23).

B Regarding A above, looking at this on a time-series basis, it is as follows.

January, 1981: the demandee, TOSHIMASA KASHIWA and MITSUMI KASHIWA joined to the demandant union.

June, 1981 : the demandee founded Incorporated company Kyoto Akabou.

July, 1983 : the demandee, TOSHIMASA KASHIWA and MITSUMI KASHIWA were expelled from the demandant union.

September, 2013: After that, TOSHIMASA KASHIWA had used the trademark "京都赤帽", and had actually controlled the company of the demandee for a long period until retirement registration was made on October 16, 2013.

C As it is obvious from the history above, first, the demandee, the brothers of TOSHIMASA KASHIWA and MITSUMI KASHIWA who were interested in the business of the demandant which was already momentum at the time of 1981, joined to the demandant union so as to try to acquire the business know-how. After the joining, after 5 months, while keeping a secret from the demandant, they founded "Kyoto Akabou", namely a company using the well-known/prominence of "Akabou" that was already established at that time without permission, which is "Akabou operating business in Kyoto." Then, until both of them were expelled from the demandant union in July, 1983, they tried to expand and enrich "Kyoto Akabou" that was independently launched by themselves while acquiring the know-how of the demandant, and used the trademark composed of a trade name that is "Kyoto Akabou, INC" after the expulsion, and it reaches to the present while free-riding on the credit on business embodied by the know-how of the demandant and the trademark "赤帽" of the demandant.

D After being expelled from the prominent organization that they belonged to, in the case in which the same business is conducted by using the trademark composed of a trade name combining "the prominent trademark composed of a trade name (赤帽)" merely with "the business location (Kyoto)", it is obvious that the demandee has unfair

intention to get improper profits by free riding on the credit on business embodied by the trademark composed of the name of the prominent organization (Akabou).

Furthermore, since the fact that the demandee founded the same business company "Kyoto Akabou" that was the internal violation of the organization while keeping it secret from the demandant organization before the expulsion exists (Evidence A No. 22), the existence of the intention of free riding is proved with further confidence.

E This case did not select the trademark accidentally conceived by persons unrelated to the demandant, and is obviously a case relating to the act of acquiring the trademark so as to free ride on the goodwill built up through the corporate efforts of the demandant, which was embodied by the trademark "赤帽," and the content thereof is extremely malignant. It can be asserted that it is a typical example falling under Article 4 (1)(vii) of the Trademark Act.

By the way, in these days, cases in which plural third parties who do not have the right to use the trademark "赤帽" do business under the name of "Akabou" on the internet are increased (Evidence A No. 24), and the demandant is undertaking preparations for legal procedures to seek deletion of those trademarks "赤帽" at the present time.

5 The lack of evidentiary value of means of proof submitted by the demandee

The demandee submitted Evidence B No. 17 to B No. 44, and submitted a proof request as means of proof so as to prove that "there is no case confusing" the demandant and the demandee.

However, it is a common sense in the law posted on the first page of the textbook of a law of evidence that "a certain fact does not exist" cannot be probed (referred to as the so-called "proof of the devil"), and no matter how many such evidence methods are collected and submitted, there is no evidentiary value. Also, all of signers on the certifications are occupied by unnamed limited companies and sole proprietorship, and industry situations are also unknown or mixed, so that, as an empirical rule, it can be easily seen that the demandee asked companies and individuals who have traded even a little in the past by saying "we do not trouble you" and the signers signed without understanding the proof content.

6 Summary

As described above, it is obvious that the Trademark was registered while violating Article 4(1)(xi), 4(1)(xv), 4(1)(vii) of the Trademark Act.

No. 4 The demandee's reply

The demandee replied to make a request that the trial decision whose content is the same as the conclusion, summarized and mentioned reasons for request as follows, and submitted Evidences B No. 1 to B No. 48 as means of evidence.

1 Use state of Trademark Registration No. 3266259

The demandee, as described in certificate of full registry records of the demandee, has carried out the services "truck transport" since the foundation of the company on April 10, 1989 to the present.

Then, the demandee, as published in the Trademark Gazette (Evidence B No. 2) and a certified copy of trademark registry (Evidence B No. 3) relating to Trademark Registration No. 3266259 (hereinafter, referred to as the "related trademark of the case"), and filed the exceptional application of the trademark on September 3, 1992. The application of the trademark was published on April 15, 1996 (Japanese Trademark

Publication No. H8-46709), and was registered on March 12, 1996.

The related trademark of the case, as published in Evidence B No. 2 (as Attachment (E)), has a structure which expresses a large figure drawing "a front view of a Maiko having a baggage dedicated" in the center part, expresses a small figure drawing "a five-story tower" in a right upper side thereof, horizontally writes the characters of "京都赤帽' under the figure drawing "the front view of a Maiko having a baggage dedicated" in the same size at the same intervals by the angular gothic body, and vertically writes the characters of "株式会社" in two rows on the left side thereof in a small size by the angular gothic body. The designated services are set to Class 39 "truck transport."

The demandee has used the trademark with the same structure as the structure of the related trademark of the case (including those that can be recognized as the same through common sense) for the services "truck transport" from the foundation of the company to the present, and also has used the trademark with the same structure as the structure of the Trademark for the services "truck transport" from November, 2006 to the present. More specifically, the demandee has 10 of two types of lorries in total, which are lorries indicating the trademark with the same structure as the structure of the related trademark of the case (including those that can be recognized as the same through common sense) and lorries indicating the trademark with the same structure as the structure of the Trademark, and all of them are used for the services "truck transport."

The demandee uses the related trademark of the case and the Trademark for advertisement, for example, can cite a copy of "NTT WEST TownPage Kyoto City Southern part edition, a cover page, Page 77, and a back cover, issued in June, 2013 by NIPPON TELEGRAPH AND TELEPHONE WEST CORPORATION" (Evidence B No. 4), a copy of "catalogs" distributed by the demandee (Evidence B No. 5), and a copy of "leaflets" distributed by the demandee (Evidence B No. 6).

Also, it is the reason why the demandee has used the trademark with the same structure as the structure of the Trademark from November, 2006 that the demandee selected the trademark with the same structure as the structure of the Trademark including the characters of "舞妓マークの" in the structure so as to further strengthen the binding force of the figure part drawing "the front view of a Maiko having a baggage dedicated" and the character part of "株式会社京都赤帽" in the structure of the related trademark of the case, because it became often that the services "truck transport" run by the demandee was called as "Kyoto Akabou with a Maiko mark" from customers of the demandee, at that time. In the selection, "舞妓さんの京都赤帽 (Maiko san no Kyoto Akabou)" which sounds better than "舞妓さんの株式会社京都赤帽 (Maiko san no kabushiki-kaisha Akabou)" is adopted.

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

The demandee acknowledges that the designated services of the Trademark are in conflict with the designated services of Cited Trademark, but it is considered clear that the Trademark and Cited trademark are not similar to each other.

Because the Trademark and Cited Trademark having the structure which horizontally writes the character of "赤帽" by red gothic body in the same size are not similar from any viewpoint of appearance, meaning, and pronunciation thereof.

Namely, concerning the appearance, the structure of the Trademark includes a

large figure drawing "a front view of a Maiko having a baggage dedicated," and in a right side of the figure, horizontally written characters of "舞妓マーク" in the same size at the same intervals by the angular gothic body, and under the charactes, horizontally, more largely written characters of "京都赤帽" in the same size at the same intervals by the angular gothic body, while the Cited Trademarks have a structure of horizontally written characters of "赤帽" in the same size by red gothic body. By customers and traders contacting with the Trademark and Cited Trademark (hereinafter, referred to as the "customers and the like"), the former and the latter are distinguishable from each other in terms of appearance, and therefore the Trademark and Cited Trademark are not similar to each other in appearance.

Concerning the pronunciation, it can be said that the pronunciations which may be generated from the structure of the Trademark are due to the figure and the characters configuring the Trademark and are four kinds of "Maiko Ma-ku no Kyoto Akabou," "Maiko ma-ku," "Maiko," and "Kyoto Akabou,", whereas the pronunciation generated from Cited Trademark is recognized only as "Akabou", so that by the customers and the like contacting with the Trademark and Cited Trademark, the former and the latter are distinguishable from each other in terms of pronunciation, and therefore the Trademark and Cited Trademark are not similar to each other in pronunciation.

Concerning the meaning, it can be said that the meanings which may be generated from the structure of the Trademark are four kinds of "舞子マークの京都赤帽 (Maiko maku no Kyoto Akabou; Kyoto Redcap of a Maiko mark)," "舞子マーク (Maiko maku; a Maiko mark)," "舞子 (Maiko; a Maiko)," and "京都赤帽 (Kyoto Akabou; Kyoto Redcap)," whereas any meaning generated from Cited Trademark is recognized only as "赤帽 (Akabou; Redcap)", so that by the customers and the like contacting with the Trademark and Cited Trademark, the former and the latter are distinguishable from each other in terms of meaning, and therefore the Trademark and Cited Trademark are not similar to each other in terms of meaning.

Also, as published in Trial Decision Gazette according to Trial No. 1997-9103 (Evidence B No. 7), in the trial decision of the case of trial regarding the invalidation of trademark registration for the related trademark of the case, it is recognized that the related trademark of the case and Cited Trademark are distinguishable from each other i in terms of any of pronunciation, meaning, and appearance.

The structure of the related trademark of the case is common with the structure of the Trademark in a point that includes the figure of the Maiko and the characters of 京都赤帽, so that the recognition can support that the allegation that the Trademark of the demandee and Cited Trademark are not similar to each other in terms of any of pronunciation, meaning, and appearance is not arbitrarily, but reasonable.

Therefore, the Trademark is not registered while violating Article 4(1)(xi) of the Trademark Act.

3 Regarding Article 4(1)(xv) of the Trademark Act

(1) Regarding the demandant's allegation

A The demandant mentions a copy of a search result of "Japanese Well-Known Trademarks" (Evidence A No. 5) as evidence, and alleges "... first, in Japanese Well-Known Trademarks in IPDL opened by the Patent Office, the trademark '赤帽' is published as one of the prominent trademarks. This simply becomes clear evidence

that the trademark '赤帽' acquires prominence in our country...."

It can be estimated that the trademark "赤帽" published in Evidence A No. 5 is published in "Japan Well-Known Trademarks" by being acknowledged as the trademark widely recognized among consumers for the designated goods "Fire engines; cigar lighters for automobiles" (Class 9), "Automobiles and their parts and fittings" (Class 12), and "Tanks [weapons]" (Class 13), and the trademark "赤帽" is not published by being acknowledged as the trademark widely recognized among consumers for the services "truck transport", so that it has to be said that the demandant's allegation is unreasonable.

B Then, the demandant, according to Evidence A No. 6, alleges that the Trademark falls under Article 4(1)(xv) and therefore its registration should be invalidated.

The demandee thinks it is clear that the demandant's allegation is not reasonable and is groundless.

Because in the appeal decision according to Appeal No. 1999-686 of Evidence A No. 6, if the applied trademark (the trademark made by writing Kanji "赤帽") is used for the designated service "truck transport," it is recognized that the traders and consumers contacting with that associates and recalls the well-known and prominent trademark "赤帽" of the demandant, and that there is a possibility to falsely recognize the origin of the services as if the applied trademark is a trademark relating to the demandant or a person who has a certain relation with the demandant, but the recognition is based on the situation of a transportation industry by lorries during a period from the filing date of the applied trademark (September 29, 1992) to the appeal decision date (September 12, 2001).

Then, since the filing date of the Trademark is February 6, 2012, it can be said that the recognition made 10 or more years before the filing date does not support the fact that the trademark "赤帽" of the demandant was a prominent trademark as of February 6, 2012.

C The demandant cites Evidence A No. 5 and Evidence A No. 6 again, for "proof of the well-known/prominence of the trademark '赤帽' by the demandant itself...," and alleges "...the prominence of the trademark '赤帽' is obviously recognized...."

The demandee in convinced that it could sufficiently clarify that the demandant's allegation with Evidence A No. 5 and Evidence A No. 6 is not reasonable and is groundless with the reasons mentioned above.

D Furthermore, the demandant submitted Evidence A No. 7 to Evidence A No. 20.

Although the reference time of the determination of the presence/absence of reasons for invalidation about the Trademark is at the time of filing the application (February 6, 2012), Evidence A No. 10 to Evidence A No. 19 were issued on later dates, so that those cannot be evidence for proving the prominence of the trademark "赤帽" as of February 6, 2012.

Concerning Evidence A No. 20, although an issue date is not indicated in the evidence, the bottom line of the 8th sheet of the evidence, it is described as "moved to Asakusa-bashi, Taito-ku, Tokyo in August, 2010," so that it is recognized that the evidence was issued by the demandant before the filing date of the Trademark (February 6, 2012). Then, in Evidence A No. 20, it is described that "...for the logo mark, expression in Kanji until then was refurbished, and Hiragana which is familiar to a wide generation and English letter of sharp impressions are combined at the present time. A charming character and an intimate mark, those two are important "signs" to

have "Akabou" feel familiar..." and "...a number of members 13,000, a number of vehicles 15,000..." (Evidence A No. 20: the upper column and the lower column in 10th sheet), and the photo of various lorries displaying the logo of "Akabou" is posted on 17th sheet.

Considering the description mentioned above, the photo, and the demandant's allegation published on the Trial Decision Gazette according to Trial No. 1997-9103 (Evidence B No. 7) that "...As of January 1992, we have a nationwide organization consisting of eight blocks in the country and 60 sales bases, and the number of vehicles is over 25,000...in 1995, we celebrated the 20th anniversary of our founding, with 200 sales bases throughout Japan, with 18,000 members and over 23,000 vehicles...," it can be acknowledged that the prominence of the trademark "赤帽" recognized in the appeal decision according to Appeal No. 1999-686 of (Evidence A No. 6) was considerably diluted on the filing date of the Trademark (February 6, 2012) for which more than 10 years have passed since the appeal decision date (September 12, 2001).

Also, in the "leaflets" issued by the demandant of Evidence A No. 9, the descriptions "Moving by Akabou," "Great ability of a small Akabou vehicle," "To Akabou in your city" and the like, and the photo of the lorry largely displaying the logo "Akabou" are posted, it cannot be acknowledged that the trademark "赤帽" is positively used.

Even though examining Evidence A No. 10 to Evidence A No. 19, the description in which the trademark "赤帽" is positively used cannot be found, and according to the description "...we, Akabou are..." or "...joined to Akabou..." (Evidence A No. 10: the lower column in 2nd sheet), and each description of "Akabou (National Akabou light motor vehicle transportation Federation of Cooperatives)" (Evidence A No. 11: 1st sheet to 14th sheet, Evidence A No. 12: 1st sheet to 6th sheet, and Evidence A No. 14: 1st sheet to 16th sheet), and "Guidance of Akabou business" (Evidence A No. 15: 1st sheet and 2nd sheet), it is acknowledged that the demandant uses the characters of "赤帽 (Akabou)" as an abbreviation of the self-name.

Therefore, the demandee thinks it is clear that the demandant's allegation by Evidence A No. 7 to Evidence A No. 20 is not reasonable, and is groundless.

(2) Whether or not the trademark is likely to cause confusion

When the Trademark is used for the designated services "truck transport" by the demandee, there is no likelihood to cause confusion with the services "truck transport" relating to the business of the demandant.

Since the Trademark is not similar to Cited Trademark having the structure consisting of the characters of "赤帽" in terms of any of appearance, pronunciation, and meaning thereof, there is no likelihood that the customers and the like contacting with the services "truck transport" relating to the business of the demandee using the Trademark and the services "truck transport" relating to the business of the association members belonging to the demandee using one or two or more of Cited Trademark, the trademark "赤帽", the trademark "あかぼう", and the trademark "Akabou," falsely grasp/recognize the services relating to the business of the demandee as the services relating to the business of the members belonging to the demandant.

Actually, in each certificate of Evidence B No. 17 to Evidence B No. 48, it is proved that proves "prove that there is no difference" in the certified matter requested by the demandee, which is "there is no example of confusing the services 'truck

transport' relating the business of our company with the services 'truck transport' relating to the business of the members belonging to National Akabou light motor vehicle transportation Federation of Cooperatives since in your company (or you) since out company got truck transport from your company (or you) until today."
(3) Summary

As described above, the Trademark was not registered while violating Article 4(1)(xv) of the Trademark Act.

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

The trademark is not similar to the trademark "赤帽" in terms of any of appearance, pronunciation, and meaning, so that there is no likelihood that the customers and the like contacting with the services "truck transport" relating to the business of the demandee using the Trademark and the services "truck transport" relating to the business of the members belonging to the demandant using the trademark "赤帽" falsely recognize each of the corresponding services. Also, it can be acknowledged that the prominence of the trademark "赤帽" as of February 6, 2012 was considerably diluted, and according to the fact that it cannot be acknowledged that the demandant positively uses the trademark "赤帽", it can be asserted that not only confusion in a narrow sense, but also confusion in a broad sense alleged by the demandant do not exist between the Trademark and the trademark "赤帽".

Also, the demandee has respectively used the trademark with the same structure as the structure of the related trademark of the case (including those that can be recognized as the same through common sense) from the foundation of the company to the present, and the trademark with the same structure as the Trademark from November, 2006 to the present, for the services "truck transport" relating to the business of the demandee. Considering the fact that, by around November 2006, the services "truck transport" relating to the business of the demandee was called as "Kyoto Akabou with a Maiko mark" from customers and the like (customers of the demandee) and was familiar to them, the application for its registration of the Trademark was filed, and as shown in Evidence B No. 4 to Evidence B No. 6, the demandee is also trying to advertise the related trademark of the case and the Trademark.

However, each content of Evidence A submitted by the demandant, as described above, does not prove that the Trademark may be confused with the trademark "赤帽."

Therefore, the demandant's allegation is based on an arbitrary decision of the demandant and is groundless.

Consequently, the Trademark was not registered while violating Article 4(1)(vii) of the Trademark Act.

5 Summary

As described above, the registration of the Trademark was not made while violating Article (4)(1)(xi), (4)(1)(xv), and 4(1)(vii) of the Trademark Act.

No. 5 Judgment by the body

1 Regarding whether the trademark "赤帽" is well-known or prominent

(1) According to Evidence A submitted by the demandant, the following facts are acknowledged.

A The service "transportation by a light lorry" relating to the handling of the demandant (hereinafter, referred to as "the demandant services") started its provision as

light transportation business by light lorries in May, 1975. The demandant was approved by the Ministry of Transport (at that time) as a federation of cooperatives of national organizations in August 1978, was developing joint enterprises from the franchise system under 51 cooperatives association of nationwide, and provided the demandant services with 15,000 members and 18,000 light lorries displaying the cited emblem on their bodies (Evidence A No. 20). Then, in "Guidance of Akabou business" (a copy; Evidence A No. 20. Also, although the creation date is unknown, it is presumed that it was created at a time not so late since August 2010 and is still in use.), on the page "History of Akabou," there are descriptions such as "In April, 1987, the number of members exceeded 13,000. The number of vehicles is 15,000," "In December, 1996, the number of members exceeded 18,000. The number of vehicles 22,293," and "In December, 1996, 'Akabou Homepage' was opened (http://www.akabou.jp/)." Also, on the page "Outline of Association," there are descriptions that as "1. History of our name," "it was the founder TOSHIO MATSUISHI who named Akabou as the organization name. In 1950 35 years before the founding, a lot of porters carrying passenger's luggage were stationed at the train station, at that time. Passengers called them wearing the red cap as a mark by the nickname of "Akabou(redcap)-san." ...The name of our organization '赤帽' includes the history of "Akabou(redcap)-san" living inevitably with luggage, and it contains the hot feelings of the founder who was impressed by its appearance and continued to teach 'courtesy, kindness, trust'," and as "2 Story about our logo," "Akabou-kun is a nickname of a present logo character of Akabou. With a red cap motif, the shape of looking at the cap from above and the figure running cheerfully are designed. Also, for the logo mark, expression in Kanji until then was refurbished, and Hiragana which is familiar to a wide generation and English letter of sharp impressions are combined at the present time. A charming character and an intimate mark, those two are important "signs" to have "Akabou" feel familiar...," and there are descriptions of "the number of members 13,000" and "the number of vehicles 15,000."

B Evidence A No. 9 is "leaflets" of the demandant, and on the left side, there are descriptions of "Easy to move by Akabou," "National Akabou light motor vehicle transportation Federation of Cooperatives," "http://www.akabou.jp/," "Newly joined membership reception," and "2012.01," and on the right side, the photo of a light lorry displaying the trademark "赤帽" on a door part is presented, and it can be acknowledged that the designed trademark which can be read as "Akabou" is displayed in the photo of the lorry. The 2nd sheet of the evidence is a list dated February 4, 2013 entitled as "2012 a moving leaflet distribution list," and according to that, it can be acknowledged that in December 2010, a total of 2,880,000 leaflet, and in December 2011 a total of 2,708,000 leaflets, were delivered to local organizations of the demandant of the country.

C It is acknowledged that Evidence A No. 10 and Evidence A No. 19 are ones that the homepage of the demandant was printed out in paper on February 26, 2013. It is acknowledged that, in addition to the trademark "赤帽," the trademark "Akabou-kun" that is the character, the trademark "あかぼう" in Hiragana, the designed trademark which can be read as "Akabou" are also used.

D The demandant opens the pages of SNS (Social Networking Service) such as "Twitter," "Facebook," and "mixi," to distribute information on the demandant services (Evidence A No. 11 to Evidence A No. 15), and it is acknowledged that in addition to

the trademark "赤帽," the trademark "Akabou-kun" that is the character, the trademark "あかぼう" in Hiragana, the designed trademark which can be read as "Akabou" are displayed.
E　Although the demandant submitted Evidence A No. 27 to Evidence A No. 46 as evidence for proving the prominence of the trademark "赤帽," it is acknowledged that as the trademark used for the demandant services, in addition to the trademark "赤帽," the trademark "Akabou-kun" that is the character, the trademark "あかぼう" in Hiragana, the designed trademark which can be read as "Akabou" are also used.
(2) According to (1) above, it is acknowledged that the demandant started the provision of the demandant services by light lorries displaying the trademark "赤帽" on door parts thereof in May, 1975, and since a period before February 6, 2012 when the application for its registration of the Trademark was filed until Jun 12, 2012 when the decision for registration was made, under 51 cooperatives association of nationwide, provided the demandant services by generally 13,000 members and 15,000 vehicles displaying the trademark "赤帽" on their bodies.

Then, considering the facts that the word "Akabou" was used for the nickname for a person who carries passenger's luggage in a railroad station, and that the demandant also uses, in addition to the trademark "赤帽," the trademark "Akabou-kun" that is the character, the trademark "あかぼう" in Hiragana, the designed Alphabetic character trademark which can be read as "Akabou" and therefore it cannot be acknowledged that only the trademark "赤帽" is used, it cannot be said that the trademark "赤帽" was widely well-known by the customers only by the display with the characters of "赤帽."

Therefore, it cannot be acknowledged that the degree of the prominence of the trademark "赤帽" in the demandant services is high.
2 Regarding the trademark used by the demandee

According to Evidence A No. 23 (certificate of full registry records of the demandee) submitted by the demandant, it is acknowledged that the demandant is a company that was established on April 10, 1989 as head office address "2-6 Arashiyama Tokaido-cho Nishikyo-ku, Kyoto-shi" for the purpose of "light lorry transportation business" and the like, and was moved to the present address on July 11, 2005.

The demandee alleged that they have used the related trademark of the case from the beginning of company establishment, and then have used the trademark with the same structure as the Trademark for the services "truck transport," and submitted each proof request of Evidence B No. 17 to Evidence B No. 48.　Then, for the proof content of each evidence, there is no circumstance to delay them, so that it is reasonable that the proof content in which the Trademark has been used from November, 2006 to the present is trustworthy.

Then, in the copy of "NTT WEST TownPage Kyoto City Southern part edition, a cover page, Page 77, and a back cover, issued in June, 2013 by NIPPON TELEGRAPH AND TELEPHONE WEST CORPORATION" (Evidence B No. 4 (as of March 1, 2013)), and the copy of "catalogs" (Evidence B No. 5) and the copy of "leaflets" (Evidence B No. 6) distributed by the demandee which were submitted by the demandee as the examples of advertising, emblems "舞妓マークの," "京都赤帽," and "a front view figure of a girl thought as a Maiko having a baggage dedicated with both

hands" are represented, so that it is acknowledged that these characters and figures have been used for "truck transport" that is the services of the demandant at least since the spring of 2013 to the present.

Therefore, it can be said that the demandee has provided the demandee services by using the Trademark from November, 2006 to the present.

Then, concerning the use aspect of the Trademark by the demandee, it is acknowledged that the character part of "京都赤帽" in the structure thereof is always used in an integrated state, and the character part of "舞妓マークの" and the part of "the front view figure of a girl thought as a Maiko having a baggage dedicated with both hands" are used in close proximity to the character part of "京都赤帽," so that the use state in which the character part of "赤帽" is separately observed cannot be acknowledged.

Also, it can be recognized that the related trademark of the case belonging to the demandee has been used since around the time of company establishment of the demandant, so that it is acknowledged that the figure part and the character part of "京都赤帽" which can be a principal part of the trademark have been inherited to the use aspect of the Trademark.

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

(1) The Trademark

The Trademark has the structure shown in Attachment (A), so that it is acknowledged that it is a composite trademark made by drawing "a front view figure of a girl thought as a Maiko having a baggage dedicated with both hands" (hereinafter, referred to as the "Maiko figure"), horizontally writing the characters of "舞妓マークの" in small letters on the right side upper part thereof, and horizontally writing the characters of "京都赤帽" in large letters thereunder.

Then, the part of the Maiko figure to be immediately recognized as being a picture of a girl in kimono, and the character part of "京都赤帽" is represented by the same typeface and the same size at equal intervals in a uniform manner and integrally, to be larger than the character part of "舞妓マークの". It can be said that these figure part and the character part give a strong impression to a viewer.

Furthermore, considering the relationship between the "Maiko figure" part and the character part of "京都赤帽," it is natural that the character part "舞妓マークの" represented in an upper stage of the character part of "京都赤帽" is the phrase explaining the Maiko figure" part. Considering the fact that it can be said that the Maiko figure" part and the character part of "京都赤帽" give a strong impression to a viewer, it is reasonable that each of the Maiko figure" part, the character part of "京都赤帽", and the character part "舞妓マークの" has a strong relation in terms of meaning.

In view of the above, the Trademark is recognized and grasped as an integral part of its composition as a whole, and it should be said that the pronunciation "Maiko Ma-ku no Kyoto Akabou" is generated according to the structure. Also, it should be said that the Trademark generates the meaning of "舞妓マークの京都赤帽 (Maiko Ma-ku no Kyoto Akabou; Kyoto Redcap of Maiko mark). "

Concerning this point, the demandant alleges that "the characters of '京都' in the structure of the Trademark are a so-called describing trademark referring to the place for providing the corresponding services, and the figure of Maiko or the characters of '

舞妓マーク' are merely a trademark with extremely weak distinctiveness which also refers to Kyoto. Thus, it is reasonable to understand that the primary part of the Trademark is in a character part of '赤帽'."

Then, looking at the character part of "京都赤帽" in the structure of the Trademark, the Kanji of "赤帽," for example, according to "Kojien the 6th edition" (Iwanami Shoten), it is listed as one meaning "1. Redcap. Especially wearing at athletic meet. 2. A person who carries baggage of passengers at the station. It is said to be wearing a redcap. Porter" and also in other language dictionaries, similar descriptions can be seen. Therefore, the Kanji of "京都" is commonly used widely to represent Kyoto or Kyoto city, and although it certainly is likely to be seen as a place to provide services, the character part of "京都赤帽" is represented in a uniform manner and integrally, and it cannot be said that the distinctiveness of the "Maiko figure" part and the character part of "舞妓マークの" is extremely weak, as the determination above. Furthermore, even in light of the actual use of the Trademark as 2 above, it should be said that the Trademark is integrally recognized and grasped as a whole of the structure, so that in the above mentioned structure of the Trademark, it is unreasonable that by separating the character part of "京都赤帽" and further separating and extracting the character part of "赤帽", this part is regarded as the primary part of the Trademark.

Therefore, the demandant's allegation cannot be adopted.

(2) Cited Trademark

Cited Trademarks 1 to 3, as described above, are respectively consisting of the characters of "赤帽," and generate the pronunciation of "Akabou," and the meaning of "赤帽 (Akabou;Redcap)."

(3) Similarity of the Trademark and Cited Trademark

As described in (1) and (2) above, the Trademark is integrally recognized and grasped as a whole of the structure, and generates only the pronunciation of "Maiko Ma-ku no Kyoto Akabou" and the meaning of "舞妓マークの京都赤帽 (Maiko Ma-ku no Kyoto Akabou; Kyoto Redcap of Maiko mark)", whereas Cited Trademark is consisting of the characters of "赤帽," and generates the pronunciation of "Akabou" and the meaning of "赤帽 (Akabou; Redcap)."

Then, it should be said that there is an error in the demandant's allegation that by separating and extracting the character part of "赤帽" from the Trademark, and on this assumption, the Trademark and Cited Trademark are similar trademarks having the same pronunciation of "Akabou" and the same meaning of "赤帽 (Akabou; Redcap)," and it cannot be adopted.

In addition, no special reason for which the Trademark and Cited Trademark are similar to each other cannot be found.

Therefore, the Trademark does not fall under Article 4(1)(xi) of the Trademark Act.

4 Applicability to Article 4(1)(xv) of the Trademark Act

As judged in 1 (2) above, concerning the trademark "赤帽," it cannot be said that only the trademark "赤帽" was used for the demandant services, so that the degree of the prominence can never be said to be high. Then, the Kanji of "赤帽" is a word originally meaning "1. Redcap. Especially wearing at athletic meet. 2. A person who carries baggage of passengers at the station. It is said to be wearing a redcap.

Porter," so that it has to be said that the degree of originality of the trademark "赤帽" is low.

Also, as described in 3 (3) above, it can be said that the Trademark and the trademark "赤帽" are not similar to each other, like as the judgement in which it cannot be the Trademark and Cited Trademark consisting of the characters of "赤帽."

Therefore, even if the Trademark is used for the designated services, it should be said that the trader and customers contacting with the same, do not associated and recall as if the services are the goods or services relating to the business of the demandant or persons who have some economic or organizational relationship with the demandant, and there is no likelihood to confuse its source.

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

5 Applicability to Article 4(1)(vii) of the Trademark Act

Article 4(1)(vii) of the Trademark Act regulates that "a trademark being likely to cause damage to public order or morality" cannot be granted trademark registration, and in the trademarks corresponding to that, "it should be said that (1) Trademarks which are, in composition per se, characters or figures, that are unethical, obscene, discriminative, outrageous, or unpleasant to people, (2) Trademarks which do not have the composition per se as prescribed in above but are liable to conflict with the public interests of the society or contravene the generally-accepted sense of morality if used for the designated goods or designated services, (3) Trademarks with their use prohibited by other laws, (4) Trademarks liable to dishonor a specific country or its people or trademarks generally considered contrary to the international faith, (5) Trademarks whose registration is contrary to the order predetermined under the Trademark Act and is utterly unacceptable for lack of social reasonableness in the background to the filing of an application for trademark registration are included" (refer to the court decision by the Intellectual Property High Court 2005 (Gyo-Ke) No. 10349, September 20, 2006).

Looking at the case on this matters, it cannot be said that the structure of the trademark itself has an aspect that imparts a unethical, obscene, discriminative, outrageous, or unpleasant to people, and also, even if this trademark is used for the designated service, it cannot be said to be liable to conflict with the public interests of the society or contravene the generally-accepted sense of morality, and furthermore, evidence that there are lack of social reasonableness in the background to the filing of an application for trademark registration cannot be found.

Therefore, it cannot be said that the Trademark is a trademark being likely to cause damage to public order or morality.

Also, the demandant, regarding the application of the provision of this item, alleges that "the purpose of the Trademark Act is to prevent free riding to the public display or prominent display (Article 1 of the Trademark Act)...if the Trademark is used for the designated goods, there is a possibility to recognize those as goods associated with "赤帽" that is the prominent trademark relating to the holder of trademark right of Cited Trademark (confusion in a narrow sense).... even if not so, some sort of close business relationship is recalled, there is a possibility to recognize that as if those are goods relating to a company associated with the organization to which the demandant belongs or goods relating to persons receiving some licenses (confusion in a broad sense)."

However, concerning the registration of trademarks considered contrary to the

purpose of the trademark Act, non-registration reasons are individually defined in Article 4(1) of the Trademark Act. The trademark to which the Article is applied has the content to be decided by the preceding judgment, and it cannot be said that the applicability of the provision of this item is uniquely influenced due to free riding on the well-known display or the prominent display or the presence/absence of the possibility to cause confusion, so that the allegation should be said as the demandant's own legal interpretation, and cannot be adopted.

Therefore, the Trademark does not fall under Article 4(1)(vii).

6 Closing

As described above, the registration of the Trademark is not made while violating Article 4(1)(xi), 4(1)(xv), 4(1)(vii), and thus the Trademark should not be invalidated under the provisions of Article 46(1) of the same Act.

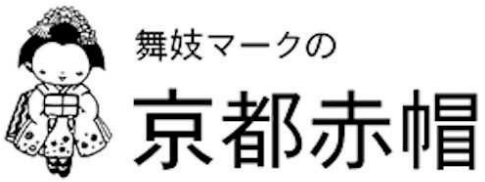
Therefore, the trial decision shall be made as described in the conclusion.

December 19, 2014

Chief administrative judge:	SEKINE, Fumiaki
Administrative judge:	TERAMITSU, Sachiko
Administrative judge:	SAKAI, Fukuzo

Attachment

(A) The Trademark



(B) Cited Trademark 1 (See original for colors)

赤　帽

(C) Cited Trademark 2 (See original for colors)

(D) Cited Trademark 3 (See original for colors)

(E) The related trademark of the case (Trademark Registration No. 3266259)