

Decision on opposition

Opposition No. 2013-900069

Tokyo, Japan

Trademark Right Holder

NUGGET INC.

Tokyo, Japan

Patent Attorney

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Trademark Opponent

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Decision on the opposition to the grant of the trademark registration No. 5544516 has resulted in the following decision.

Conclusion

The trademark registration No. 5544516 is cancelled.

Reason

1 The Trademark

The trademark registration No. 5544516 (hereinafter referred to as the "Trademark") consists of standard characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)", and the application for its registration was filed on January 24, 2012 with designated services of Class No. 45 "Marriage partner introduction or dating services; dating services and provision of information on the same using websites on the Internet; provision of information necessary for marriage by using the Internet.". The decision for registration was made on December 6, 2012, and the trademark was registered on December 21, 2012.

2 The grounds of the opposition to registration

The opponent (hereinafter referred to as "The Opponent") insisted that the Trademark falls under Articles 3(1)(iii) and 4(1)(vii) of the Trademark Act and its registration must be invalidated in accordance with Article 43-2(1) and summarized and mentioned reasons for request as follows, and submitted Evidence A No. 1 as means of evidence.

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

The Trademark is formed by combining the characters of "オタク (otaku)" and the characters of "婚活 (konkatsu: marriage hunting)", and "オタク (otaku)" indicates people who love anime, manga, games, idols, and the like, and "婚活 (konkatsu: marriage hunting)" indicates to find an ideal partner through a marriage activity. Therefore, the entire configuration of the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" indicates a marriage activity of people who love anime, manga, games, idols, and the like in a broad sense.

Furthermore, when the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" is searched on the Internet, countless cases can be searched as the

characters having the above meaning. Therefore, the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" does not have distinctiveness.

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

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

In Japan where the population ages and fewer babies are born, "婚活 (konkatsu: marriage hunting)" has a meaning of a first step of countermeasure for preventing the decrease in the number of children, and the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" is a common word in the marriage hunting. Therefore, monopoly of the Trademark consisting of the above characters by a single private company disturbs the public interest.

Therefore, the Trademark falls under Article 4(1)(vii) of the Trademark Act.

3 Reasons for rescission for the Trademark

The reasons for rescission for the Trademark issued on August 19, 2013 because the Trademark falls under Article 3(1)(iii) of the Trademark Act is summarized and mentioned as indicated in the Attachment.

4 Opinion of the holder of trademark right

(1) Regarding applicability of the Trademark to Article 3(1)(iii) of the Trademark Act

A Regarding Internet information and newspaper article information

In Internet information described in the reasons for rescission in 3 (Attachment), the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are used in A-(A) and A-(B). However, it cannot be distinguished that these characters indicate "marriage activity for otaku" or the trademark of the holder of trademark right, and the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are not used in the newspaper article information in the reasons for rescission. Accordingly, these information is not sufficient to be the ground for an actual situation in which the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are used as a word indicating the "marriage activity for otaku (otaku's marriage hunting)".

B Other documentation

Even when the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are used as the word indicating the "marriage activity for otaku (otaku's marriage hunting)" in the documentation other than A described above, the characters are not contained in Kojien, Daijirin, Basic Knowledge of Modern Terms (現代用語の基礎知識), and the like and it cannot be said that the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are generally used.

C Regarding meaning of connection between the characters of "XX (target)" and the characters of "婚活 (konkatsu: marriage hunting)"

It cannot be generally acknowledged that there is a practice such that a word having a meaning of "marriage activity for XX (target)" is formed by combining a word indicating the target before the word of "婚活 (konkatsu: marriage hunting)".

D Summary

As described above, even though the Trademark is expressed by combining "オタク (otaku)" with "婚活 (konkatsu: marriage hunting)" in series, in a case where viewing the Trademark for the first time, the consumer does not recognize the

Trademark as characters having the meaning of "marriage activity for otaku" and recognizes "オタク婚活 (otaku konkatsu: otaku marriage hunting)" as a coined word in general.

Therefore, the Trademark is a trademark having the distinctiveness and does not fall under Article 3(1)(iii) of the Trademark Act.

(2) Regarding applicability of the Trademark to Article 3(2) of the Trademark Act

The holder of trademark right has developed the business using the Trademark since around June 2011, and held otaku marriage hunting parties in Nihonbashi, Shinjuku, Ikebukuro, and Akihabara in Tokyo, Kyoto, and Osaka. As of September 2013, the number of parties which have been held exceeds 630 times, and more than 25,200 people have used the parties in total. The parties are very popular, and are scheduled to be held in Sendai, Niigata, Nagoya, and Fukuoka.

The holder of trademark right also develops the business using the Internet by using the Trademark, and the number of registered people exceeds 1,500 as of September 2013.

Furthermore, each business of the holder of trademark right has been greatly taken up in a large number of media as described in A to D below. In addition, the business of the holder of trademark right has been appeared on the Internet many times and attracts attention. Furthermore, after registering the Trademark, the holder of trademark right develops the businesses as clearly indicating that "オタク婚活 (otaku konkatsu: otaku marriage hunting)" is the registered trademark in the website. Therefore, the Trademark is known as the trademark of the holder of trademark right throughout Japan.

Therefore, the Trademark satisfies requirements in Article 3(2) of the Trademark Act.

A Television broadcast (Evidence B No. 1)

On May 31, 2012, in "Tokudane (とくダネ!)" which is a program by Fuji Television Network broadcasted throughout the country (average audience rating is about 10%), the business of the holder of trademark right was reported, and the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" were greatly introduced.

B Newspaper report (Evidence B No. 2)

In Nikkei Marketing Journal (circulation is over 250,000) dated on June 4, 2012, the business of the holder of trademark right was taken up.

C Magazines and the like (Evidence B No. 3 to B No. 10)

In Weekly Asahi (circulation is over 210,000) published on June 15, 2012, an article regarding the business of the holder of trademark right was taken up (Evidence B No. 3), and in addition, the business was taken up in a large number of magazines and the like (Evidence B No. 4 to B No. 10).

D The Internet (Evidence B No. 11)

In websites on the Internet such as "J-CAST news (June 19, 2011)", "Japan Internet.com (June 10, 2011)", "marriage hunting navi (March 24, 2012)", "Animate TV (November 30, 2012)", "Nikoniko news (May 31, 2012)", "Menjoy! (October 23, 2012)", "Rocket Punch News (September 26, 2011)" (it can be found that these are information which were posted before the date of the decision of registration of the Trademark) and others, the business of the holder of trademark right was taken up many times.

5 Judgment by the body

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

Since it is acknowledged that the reasons for rescission in 3 (Attachment) issued with respect to the Trademark is reasonable, it should be said that the registration of the Trademark is in breach of Article 3(1)(iii) of the Trademark Act.

(2) To the opinion of the holder of trademark right relative to the reasons for rescission

The holder of trademark right insists that the Trademark is a trademark which can have the distinctiveness. However, as indicated in A and B below, the opinion of the holder of trademark cannot be accepted.

A Regarding applicability of Article 3(1)(iii) of the Trademark Act

The holder of trademark right insists that it cannot be said that the word of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" is used as a term indicating "marriage activity for otaku" in general because the word is not contained in the newspaper article information, Kojien, Daijirin, Basic Knowledge of Modern Terms (現代用語の基礎知識), and the like.

In addition, the holder of trademark right insists that, it cannot be acknowledged in general that there is a practice such that the word having the meaning of "marriage activity for XX (target)" is formed when the word indicating the target is combined before the word of "婚活 (konkatsu: marriage hunting)", therefore, even when the Trademark is expressed by combining the characters of "オタク (otaku)" with "婚活 (konkatsu: marriage hunting)" in series, the consumer coming into contact with this does not recognize the Trademark as the characters having the meaning of "marriage activity for otaku" and recognizes it as a coined word in general.

However, at the time of the decision for registration of the Trademark, the meanings of the words of "オタク (otaku)" and "婚活 (konkatsu: marriage hunting)" are as described in the reasons for rescission in 3 (Attachment), it is not unnatural that the traders and consumers coming into contact with the Trademark which is only expressed in series by combining the words recognize and understand that the Trademark has the meaning of "marriage activity for otaku (otaku's marriage hunting)" based on the meanings of both words. At the time of the decision for registration of the Trademark, a business and the like for providing a chance and a place for "activity to get married (marriage hunting)" for people who are referred to as otaku is done in general, and the characters (words) of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" were used as the term indicating the above activity. In consideration of above actual circumstances, it is reasonable to understand that the traders and consumers only recognize the meaning of "otaku's marriage hunting (activity of otaku to get married)" from the trademark in the application consisting the words of "オタク (otaku)" and "婚活 (konkatsu: marriage hunting)" written in series.

Therefore, when the Trademark is used for its designated services, it should be said that the Trademark consists solely of a mark indicating, in a common manner, the service quality (content) and usage.

Therefore, the Trademark falls under Article 3(1)(iii) of the Trademark Act.

To say that one trademark falls under a "trademark consisting consists solely of a mark indicating, in a common manner, the service quality", it is sufficient that the traders and consumers coming into contact with the trademark recognize it as the

trademark indicating the service quality in general. Therefore, even when the word "オタク婚活 (otaku konkatsu: otaku marriage hunting)" itself is not contained in the newspaper article information, Kojien, Daijirin, Basic Knowledge of Modern Terms (現代用語の基礎知識), and the like, this does not indicate that the Trademark has the distinctiveness.

B Applicability of the Trademark to Article 3(2) of the Trademark Act

As the business using the Trademark, the holder of trademark right held 630 times of the marriage hunting parties in Nihonbashi, Shinjuku, Ikebukuro, and Akihabara in Tokyo, Kyoto, and Osaka from June 2011 to September 2013 (used by 25,200 people in total), develops the business using the Internet and clearly indicating that the Trademark is a registered trademark after registering the Trademark, and the business of the holder of trademark right was greatly taken up in a large number of media. According to the above facts, the holder of trademark right insists that the Trademark is known throughout Japan as the trademark of the holder of trademark right. Furthermore, the holder of trademark right submitted respective items of Evidence B including the situation after the registration of the Trademark and insists that the Trademark satisfies the requirements of Article 3(2) of the Trademark Act and has the function for distinguishing relevant services from others.

However, according to the respective items of Evidence B submitted by the holder of trademark right, it is found that the holder of trademark right has started the business regarding "otaku's marriage hunting (activity for otaku to get married)" since June 2011, the business was introduced in one TV program and one newspaper, and some magazines in May and June 2012, and the articles regarding the business were described on the plurality of websites after June 2011. However, the content of the introductions and the articles only introduce that the holder of trademark right held the party for "otaku's marriage hunting (activity for otaku to get married)" and manages the website called "Aruera" to hold the parties. The fact specifically confirming the past records such as the number of held parties insisted by the holder of trademark right cannot be found.

In addition, according to the fact indicated in the reasons for rescission (Attachment) in 3, actual circumstances are acknowledged such that the business and the like for providing a chance and a place for the marriage hunting for otaku has been already done in general and the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" have been used as the term indicating the marriage hunting before the time of the registration of the Trademark (December 6, 2012).

Therefore, it should be said that it cannot be acknowledged that the Trademark was recognized by the consumer as a trademark indicating the service regarding the business of the holder of trademark right as a result of using the Trademark at the time of the registration of the Trademark.

Therefore, it cannot be acknowledged that the Trademark falls under Article 3(2) of the Trademark Act.

(3) Summary

As described above, since it must be said that the Trademark was registered while violating Article 3(1)(iii) of the Trademark Act, the registration of the Trademark should be cancelled according to the Article 43-3(2) of the Trademark Act.

Accordingly, the decision shall be made as described in the conclusion.

November 22, 2013

Chief administrative judge: MIZUGUKI, Wataru
Administrative judge: KAJIWARA, Yoshiko
Administrative judge: TANAKA, Takanori

Attachment (reasons for rescission)

1 According to the evidence submitted by The Opponent (Evidence A) and the result of the investigation by ex officio in the body, the following Internet information and newspaper article information are acknowledged.

A Internet information

(A) In "YAHOO! JAPAN Chiebukuro (知恵袋; pearls of wisdom)", it is described that "I write in Dojinshi (self-published works) (female). I have gone to otaku konkatsu (オタク婚活; otaku marriage hunting) several times to get married..." and "Date of question: 2011/11/1..." (corresponding to second one in second page in Evidence A No. 1)

(detail.chiebukuro.yahoo.co.jp/qa/question.../q1374577413)

(B) In "YAHOO! JAPAN Chiebukuro (知恵袋; pearls of wisdom)", it is described that "I'm interested in otaku konkatsu (オタク婚活; otaku marriage hunting). I am 20-years-old girl and loves anime and manga"...is it difficult to get success in otaku konkatsu (オタク婚活; otaku marriage hunting)?..." and "Date of question: 2012/3/12...". As responses to the question, it is described that "...you should go there to enjoy like "find someone who can get along with you in otaku konkatsu (オタク婚活; otaku marriage hunting)"" and "although I don't know much about otaku konkatsu (オタク婚活; otaku marriage hunting), the story of "marriage hunting for otaku" was featured on an evening local news program the other day". In addition, in both responses, it is described that "Date of response: 2012/3/13..." (corresponding to fourth one in the second page in Evidence A No. 1)

(http://detail.chiebukuro.yahoo.co.jp/qa/question_detail/q1483353494)

(C) In "TV blog", under the title of "Woman of thirty one joined otaku konkatsu (オタク婚活; otaku marriage hunting) party/Super J channel", it is described that "Ms. Tanaka joined "I'm Single otaku konkatsu (オタク婚活; otaku marriage hunting) party EX"..." and "2012-02-28..."

(<http://tv-blog.blog.so-net.ne.jp/2012-02-28-4>)

(D) In "Nihon blogmura", under the title of "Otaku should get married with otaku?", it is described that "Recently, it seems like that marriage hunting sites and matchmaking parties called as "オタク婚活 (otaku konkatsu: otaku marriage hunting)" are popular..." and "2012/07/16..."

(<http://www.blogmura.com/profile/00968633.html>)

(E) In "Setsuna Nikki (せつな日記)", under the title of "I went to otaku konkatsu (オタク婚活; otaku marriage hunting)" dated on "September 4, 2012 (Tue)", it is described that "Anyway, I went to otaku konkatsu (オタク婚活; otaku marriage hunting) the other day. I registered for an otaku marriage hunting site before..."

(<http://setuna-chi.moe-nifty.com/blog/2012/09/post-badc.html>)

(F) In "Woman excite", under the title of "What's the charm of otaku!? - girls who are tired of marriage hunting should know [otaku konkatsu (オタク婚活; otaku marriage hunting) first part]", it is described that "December 7, 2012..." and "in matchmaking parties and marriage hunting..., for you, the depth and the earnest of the otaku konkatsu (オタク婚活; otaku marriage hunting) party is worth to join".

(http://woman.excite.co.jp/article/love/rid_E1354511167107/)

(G) In "JCAST news", under the title of ""otaku konkatsu (オタク婚活: otaku marriage hunting)" sites are rapidly increased Otaku can understand each other", it is described that "2011/6/19..." and ""marriage hunting sites" to connect otaku men and women have been increased. ...get avoided in a place of general marriage hunting...".

(www.j-cast.com/2011/06/19098231.html?p=all)

(H) In "Hataraku mono news: life VIP craftsperson blog www (働くモノニュース : 人生VIP職人ブログwww)", under the title of "otaku konkatsu (オタク婚活; otaku marriage hunting) in Washimiya, seven couples were born, pairing rate is 35%", it is described that "2010/11/29 (Mon)..." and "Event for providing a meeting place for otaku men and women held in Washimiya-chiku, Kuki-shi, Saitama which is the sacred place of animation "Lucky Star (らき☆すた)"".

(<http://workingnews.blog117.fc2.com/blog-entry-3432.html>)

(I) In "Otaku konkatsu (オタク婚活; Otaku marriage hunting) guide", under the title of "marriage hunting party for otaku is cool", it is described that "Marriage hunting parties and events for otaku have been actively held since around 2011" and "...now otaku konkatsu (オタク婚活; otaku marriage hunting) party is big success. You might need to wait a lot to make reservation".

(<http://happyomi.com/>)

(J) In "Searchina", under the title of "Otaku konkatsu (オタク婚活; Otaku marriage hunting) party at sacred place of "Lucky Start (らき☆すた)", it is described that "[Social news] 2010/11/01 (Mon)..." and "In Washimiya-chiku, Kuki-shi, Saitama, an exclusive marriage hunting event for otaku... will be held!!".

(http://news.searchina.ne.jp/disp.cgi?y=2010&d=1101&f=national_1101_011.shtml)

B Newspaper article information

(A) In "Tokyo Shimbun" (November 23, 2010, morning edition), under the title of "Rush in search of love of otaku Marriage hunting event at "sacred place" Kuki on 28th", it is described that "When the commerce and industry association in Washimiya-chiku, Kuki-shi, Saitama which makes effort to boost the development of the area planed an "Otaku-only" marriage hunting event, 501 people that substantially exceeds the fixed number of 40 applied to participate in the event...".

(B) In "Shizuoka Shimbun" (November 18, 2010, evening edition), under the title of "A flood of applications to otaku-only marriage hunting - Saitama, former Washimiya-cho", it is described that "An otaku-only "marriage hunting" party was planned in former Washimiya-cho (Kuki-shi) in Saitama, and about 500 applications were flooded to the event for the fixed number of 20 male and female...".

2 Regarding "オタク (otaku)" and "婚活 (konkatsu: marriage hunting)"

The word of "オタク (otaku)" is generally known and used as a word which indicates "commonly, a person who has a liking for specific fields and stuffs and actively collects related products and related information and indicates a person who has a liking for world-view with relatively high imaginariness such as animations, TV games, and idols in a restricted meaning.... the word has been used since around the middle of 1980's". (October 27, 2006 "Daijirin 3rd edition" published by Sanseido Co., Ltd.) and a word having the meaning of "It indicates a person and behavior engaging in and having perverse obsession with a personal hobby. The word was born in first half in 1980's and was originally used for a specific hobby such as manga and amine.

However, as being widely used, the meaning of the word has been extended and changed, and the meaning is substantially the same as "mania" now..." (January 1, 2011, "Basic Knowledge of Modern Terms (現代用語の基礎知識)" published by JIYUKOKUMINSHA.). Furthermore, the word of "婚活 (konkatsu: marriage hunting)" is generally known and used as a word having the meaning of "activity to get married" ("Basic Knowledge of Modern Terms (現代用語の基礎知識)" mentioned above).

Then, it is natural to recognize that the Trademark is expressed in series by combining the words of "オタク (otaku)" and "婚活 (konkatsu: marriage hunting)".

3 Regarding the Trademark "オタク婚活 (otaku konkatsu: otaku marriage hunting)"

According to the facts indicated in 1 described above, the actual circumstances can be acknowledged such that it can be assumed that the business and the like for providing a chance and a place for "activity to get married (marriage hunting)" for people who are referred to as otaku has been already done in general before the time of the registration of the Trademark (December 6, 2012), and the characters (words) of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" have been used as the term indicating the activity for otaku to get married (otaku's marriage hunting). In consideration of these circumstances, it is reasonable to understand that the characters of "オタク婚活 (otaku konkatsu: otaku marriage hunting)" included in the Trademark are only recognized as the words having the meaning of "otaku's marriage hunting (activity for otaku to get married)" by traders and consumers.

Therefore, in terms of relation with the designated services of the Trademark which are acknowledged to be provided to support the activity to get married (marriage hunting), it should be said that the Trademark is only recognized as a trademark expressing the service quality (content) and the usage for the purpose of supporting the marriage hunting of people called as otaku (provision of information and the like).

According to the above, when the Trademark is used for the designated services, it should be said that the Trademark is a trademark consists solely of a mark indicating, in a common manner, the service quality (content) and the usage. Therefore, the trademark cannot perform the function for distinguishing relevant services from others and falls under Article 3(1)(iii) of the Trademark Act.

Therefore, it should be said that Trademark was registered while violating Article 3(1)(iii) of the Trademark Act.