

Appeal decision

Appeal No. 2014-17409

Shizuoka, Japan

Appellant

SEIKI JYUKO CO. LTD.

Tokyo, Japan

Patent Attorney

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The case of appeal against the examiner's decision of refusal Trademark Application No. 2013-72321 has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

1. The trademark in the Application

The trademark in the Application consists of the standard characters of "ブラインド網戸", and the application for its registration was filed on September 17, 2013 by setting Class No. 6 "Screen made of metal" and Class No. 19 "Screen (not of metal)" as the designated goods.

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

The examiner's decision found and judged that "The trademark in the Application consists of the standard characters of 'ブラインド網戸', which is generally used to designate goods having the functions of a 'blind (ブラインド)' and a 'screen (網戸)'. Thus, when using the trademark for 'screens having the function of a blind' of the designated goods, the trademark in the Application is recognized as a trademark consisting solely of a mark merely indicating, in a common manner, the quality of the goods. Therefore, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act. If the trademark is used for any products other than that mentioned above, the trademark may mislead as to quality of goods, and thus the trademark falls

under Article 4(1)(xvi) of the Trademark Act." and rejected the Application.

3. Examination of evidence by the body

The body has carried out an ex officio examination of evidence as to whether the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act. As the result of the examination, the facts described in the Attachment have been found and disclosed to the appellant by a notice of examination of evidence dated January 28, 2015 to provide the appellant an opportunity to submit an opinion, designating a time limit for such purpose, under the provisions of Article 56(1) of the Trademark Act which is applied mutatis mutandis in the provisions of Article 150(5) of the Patent Act.

4. Gist of the appellant's opinion in response to the notice of examination of evidence

The evidence of the examination of evidence indicated in the Attachment merely shows a fact that goods having both the functions of a "blind (ブラインド)" and a "screen (網戸)" are selling and does not show a fact that the wording "ブラインド網戸" is commonly used by consumers to indicate such goods having those respective functions (qualities). In addition, there found no description that shows that the wording "ブラインド網戸" indicates a specific function (quality).

Therefore, it cannot be said that the wording "ブラインド網戸", which is a coined word into which words have been integrated in series, is commonly used in transactions by the consumers dealing the designated goods relating to the trademark in the Application in order to indicate a specific meaning, and thus the trademark in the Application does not fall under Article 3(1)(iii) of the Trademark Act.

5 Judgment by the body

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

As described in 1 above, the trademark in the Application consists of the standard characters of "ブラインド網戸", which are readily recognized by an observer as having been configured by connecting the characters of "ブラインド" and the characters of "網戸". Of the configuration parts of the trademark in the Application, the part of the characters "ブラインド" is wording that is widely and commonly used to represent a "sunshade" or "louver door", and the part of the characters "網戸" is a common name representing the designated goods of the Application.

In light of the facts indicated in the Attachment, it is recognized that, in the industry related to the designated goods of the Application, the part of the characters "ブラインド網戸" is used as wording representing specification (equipment) of a vehicle

interior or a dwelling and there are deals on goods having both the functions of a blind (ブラインド) and a screen (網戸).

Thus, if the trademark in the Application is used for the designated goods, it is reasonable to say that the traders and consumers coming into contact with the trademark would readily understand or recognize the meaning of the trademark as "goods having both the functions of a blind (ブラインド) and a screen (網戸)", and thus it has to be said that the trademark is nothing but indicating the quality of the goods in a common manner.

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

(2) Argument of appellant

The appellant argues that the evidence indicated in the notice of the examination of evidence described in 3 above merely shows a fact that goods having both the functions of a "blind (ブラインド)" and a "screen (網戸)" are selling and there found no description that shows that the wording of "ブラインド網戸" indicates the quality of the goods having those respective functions (qualities).

However, in order to say that a trademark indicates the quality of goods as specified in Article 3(1)(iii) of the Trademark Act, it is sufficient if traders and consumers in our country recognize the trademark as indicating the quality of the goods and the trademark need not be actually used to indicate the quality of the goods. The trademark in the Application is configured by connecting the wording "ブラインド (blind)" and the wording "網戸 (screen)", which are recognized as representing the goods or the functions thereof. In consideration of these with the actual state of transactions as described in the Attachment, it is reasonable to say that the trademark in the Application is recognized as a whole to indicate the quality of the goods.

Therefore, the argument of the appellant cannot be accepted.

(3) Summary

As described above, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, and thus it cannot be registered.

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

April 24, 2015

Chief administrative judge: SAKAI, Fukuzo
Administrative judge: TEZUKA, Yoshiaki
Administrative judge: URABE, Yoshie

Attachment (facts disclosed in the notice of examination of evidence dated January 28, 2015)

1. The wording of "ブラインド"

Under the item "ブラインド blind" in "Encyclopedia of Architecture and Building", 2nd Edition (trade edition), SHOKOKUSYA Publishing Co. Ltd., there is a description that reads: "A general name for an object which is originally created for the purpose of blocking sunlight and avoiding being seen by people. It is a shutter into which a louver to be attached outside a window has been integrated and is to be attached mainly to a window having glass surfaces or a door for the purpose of reducing or blocking direct sunlight coming into a room (also ventilating a room). Examples of blinds include a sunshade, a blind door, a louver, a bamboo blind, and a curtain".

2. Examples of use of the wording of "ブラインド網戸".

(1) In the website of "All About", in the category of "Accommodation and Estate", as "Actual examples of accommodation by an architect and a design office or by an architect" under the heading of "Many-windowed house with 'light tube' [YNH]", there is a description that reads: "Sashes and ブラインド網戸 are integrated into windows facing outside. In order to not draw attention to the existence of them, the fitting of frames are devised to be nearly frameless". (<http://allabout.co.jp/gm/gc/393620/3/>)

(2) In the website of "Minegishi construction firm", there is a description of accommodation property information that reads: "All the windows (including windows of bathrooms) are 'double glass' windows having a role to play in air conditioning and securities. Windows with ブラインド網戸 are also available". (<http://www.minegishi-koumuten.com/house/izumi-parktown-o/izumi-parktown-o.html>)

(3) In the website of "Gallery of accommodations by Mitsubishi Jisho Residence", under the heading of "Fascination of condominiums having a balcony with a roof" as a "Review by a family of three people living in Mitaka-city", there is a description that reads: "On the basis of my experience in living here, an annoying thing is the ブラインド網戸. It is very tiresome to care it, for example, in winter". (<http://www.mecsumai.com/brand/detail/id/238>)

(4) In the website of "Kabushiki Kaisya Rotas", under the heading of "Multi container mini for use in light truck", there is a description that reads: "Standard equipment/ White body manufactured by FRP; Rear entrance door 73 cm x 167 cm, double lock/ vehicle left side flip up door 95 cm x 150 cm with screen (can be modified to double acryl window 60 cm x 120 cm with ブラインド網戸)". (<http://www.rotas.co.jp/menu/container.html>)

(5) In the website of "N-life", as used car information under the heading of "H. 23 (2011) Mazda Bongo truck, Rotas RV-manufactured manbow, power generator and air conditioner", there is a description of "Camping information" that reads: "... air conditioner by Panasonic!!; television (digital terrestrial broadcasting)!!; microwave oven!!; 40 liter refrigerator!!; kitchen sink (water supply tank and waste water tank)!!; bunk bed!!; double bunk beds!!; full-flat bed!!; ブラインド網戸!!".

(<http://www.nextlife.club/archives/185>)

(6) In the website of "Camper Lot Lyncs", there is a description of "Specially selected used camping car information" that reads: "Mounted major equipment: Fully equipped car (Dometic-manufactured freezer/refrigerator (3-way-110 liter); cassette toilet; 3-range gas cooker; double acryl window and ブラインド網戸, etc...".

(<http://www.lyncs.co.jp/usedcars-Ant426.htm>)

3. Goods having the functions of a "blind (ブラインド)" and a "screen (網戸)"

(1) On page 11 of "Nikkei Sangyo Shimbun" dated September 27, 1977, under the heading of "Nihon Sheruta developed an aluminum-made louver having the functions of a blind, a screen, and a plane lattice", there is a description that reads: "Nihon Sheruta, a house-related product planning company, has developed an aluminum-made louver having three functions of a blind, a screen, and a plane lattice, and is to sell the product through house-equipment sales companies including Nippon Light Metal Co., Ltd and Seiki Hanbai. The louver is attachable to any window or sash only with a screw driver. In addition, it makes various windows fulfil functions of a window and provides good heat insulation, according to the company".

(2) On page 13 of "Nikkei Sangyo Shimbun" dated October 27, 1983, under the heading of "Kiwa Kogyo to sell heat insulating screen, also having blindfold function", there is a description that reads: "Kiwa Kogyo, a window-related aluminum building material manufacturer (...), has started to sell 'Kiriko heat insulating screen', which is attached to an outside frame of a window to block solar heat, all over the country. The product provides, in addition to the conventional insect-blocking effect of a screen, reduction in air conditioning cost by insulation of external heat and a blindfold effect preventing from being seen from the outside. ... The heat insulation screen is configured by coating core wires made of glass-fiber with polyvinyl chloride, weaving the wires to a mesh net, and attaching the net to a screen frame. Unlike a common screen net, it has bold vertical fibers so that it blocks solar heat outside the window, and it also has the functions of a bamboo blind, a blind, a lace curtain, and the like".

(3) On page 11 of morning paper of "Yomiuri Shimbun" (Tokyo edition) dated June 27, 1997, under the heading of "Screen for condominium entrance put on the market by

Joisutaffu", there is a description that reads: "Joisutaffu, a house equipment direct-sales firm, has started to sell 'Entrance screen door', which is for use as a screen for entrances of condominiums. The product is provided with blades like a blind, allowing natural wind to come into a room while preventing the room from being seen from the outside. Also, a mail box is attached".

(4) On page 5 of "Nikkan Kogyo Shimbun-Ryutuu Service Shimbun" dated June 29, 2001, under the heading of "Izumi Seisakusyo to sell a screen equipped with a blind", there is a description that reads: "Izumi Seisakusyo (...) has developed 'Sisenresu', a screen in which a blind has been attached to the inside of a frame, and is to sell the product from this July. The screen is available with a size of 300 mm or more for both the width and the height to be customized to a desired window frame size. ... The screen has been planned and commercialized under the concept of a screen capable of allowing wind to go through, blocking light, and hiding from the outside" (...).

(5) In the website of "FUJISASH CO. LTD.", under the heading of "ECO double sliding shutter", there is a description that reads: "The functions of a shutter, a blind, and a window screen have been integrated in the product."

(http://www.fujisash.co.jp/hp/special/windowreform/pdf/ecoseries_hikichigai.pdf)

(6) In the website of "Nissho Arumi Kogyo Kabushiki Kaisya ", in the "Products category", in "Window screen, door screen" at "Kuru Eito V", there is a description that reads: "A screen door of mid-fold type for use in condominium entrance, equipped with a blind type ventilation function. There is also a description concerning the feature of the product as "Wind and light are fully available with privacy reliably guarded".

(<http://www.nisshoalumi.co.jp/fabric/book/#page=55>)

(7) In the website of "Shatta Honpo", under "Other construction examples", there is a description that reads: "In the residence of owner H in Tajimi-city, a door screen for a high grade entrance (entrance door screen) is attached. The door screen employs outside a blind so that you can control the wind entering the inside. Upper and lower locks equipped".

(<http://www.kaneshirokouji.com/cont5/main.html>)