

Trial decision

Revocation No. 2014-300910

Kanagawa, Japan

Demandant

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Patent Attorney

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Demandee

GYUZEN CO. LTD.

A trial decision for revocation of the trademark with Registration No. 5117905 between the parties above shall be made as follows.

Conclusion

The trial of the case was groundless.

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

Reason

1 The Trademark

The trademark with Trademark Registration No. 5117905 (hereinafter referred to as the "Trademark") consists of "牛善" written in Chinese characters (Chinese characters of "Gyuzen"), its registration application was filed on April 11, 2007 (Heisei 19), the trademark was registered on March 14, 2008 (Heisei 20) with "meat, processed meat products" of class "29" and "providing food and drink" of Class "43" as its designated goods and services.

The request for the trial was registered on December 3, 2014 (Heisei 26).

2 The demandant's allegation

The demandant requested the trial decision, "the trademark's registration in connection with the designated services "providing food and drink" of Class "43" in the designated goods and the designated services of the Trademark must be cancelled. The costs in connection with the trial shall be borne by the demandee", because there is no fact that the Trademark had been used for the aforementioned services in Japan for 3 consecutive years before the demand for the trial was registered.

The demandant does not mention any rebuttal against the demandee's reply.

3 The demandee's allegation

The demandee replied to request a trial decision whose content is the same as the conclusion, summarized and mentioned reasons for reply as follows, and submitted Evidences B No. 1 to A No. 7 as means of evidence.

Reason for reply

The demandee has been conducting the business "Meat Dish Gyuzen" at the address of 3-10-19 Kameari, Katsushika-ku since January 2011 to this date and using the Trademark "牛善" for "providing food and drink".

4 Judgment by the body

(1) According to the evidences submitted by the demandee, the following is acknowledged

A Evidence B No. 1

Evidence B No. 1 is "a business permit" issued by a chief executive officer of Katsushika City Health Center, and "186-1, Nishisangao, Noda City, Chiba Prefecture" as "a business owner's address"; and "Gyuzen.Co.,Ltd." as "a business owner's name"; "101 Sun City Kameari, 3-10-19, Kameari, Katsushika-ku, Tokyo" as "address of business office"; "Gyuzen" as "name, trade name or firm name of business office"; "restaurant business" as "types of business"; and "this permit shall be effective from January 20, 2011 (Heisei 23) to January 31, 2017 (Heisei 29)" as "contents of permit" are described.

B Evidence B No. 2

Evidence B No. 2 is "a menu table" for Gyuzen's meat dish. This displays characters "牛善" (Chinese characters of "Gyuzen") written in a cursive writing style in a large size with characters "meat dish" at the upper part. Under this, a sentence "A course of meal which mainly supplies the prime beef of Japanese black cattle which Gyuzen singled out in combination with the luxury foodstuff which a chef carefully selected; contents of a menu; and "25,000 yen for each person (excluding consumption tax and service charge) are described.

C Evidence B No. 4

Evidence B No. 4 is "a receipt" (a copy) issued by Gyuzen on February 6, 2011 (Heisei 23), in which "Mr. Shoji" as an addressee of the receipt; "27,500 yen as cost of meal"; and "Japanese beef grilled meat dish, Gyuzen of Sun City Kameari, 3-10-19, Kameari, Katsushika-ku, Tokyo" as "a person who issued the receipt" are described.

(2) Judgment

According to the aforementioned (1), the holder of trademark right of the Trademark, "Gyuzen.Co., Ltd." "provided meat dish" at the Gyuzen shop of Sun City Kameari, 3-10-19, Kameari, Katsushika-ku, Tokyo on February 6, 2011 (Heisei 23) within 3 years prior to the registration of the demand for the trial, and it is thus presumed that the "menu table" of Evidence B No. 2 had been used at the same shop at the same time.

And on this menu table, a trademark, "牛善" (Chinese characters of "Gyuzen") written in a cursive writing style which is deemed identical from generally accepted perspective with the Trademark is used.

Hence, the aforementioned acts fall under "acts of displaying ... , price lists or trading documents relating to goods or services to which a mark is attached, ..." under Article 2(3)(viii) of the Trademark Act.

(3) Summary

As described above, it can be concluded that the demandee has proved that the holder of trademark right had used the Trademark in Japan within 3 years prior to the registration of the demand for the trial in connection with "Class 43 Providing food and drink" in the designated services pertaining to the demand for the trial.

Accordingly, with regard to the designated services pertaining to the demand, the Trademark's registration shall not be cancelled under the provisions of Article 50 of the Trademark Act.

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

May 26, 2015

Chief administrative judge: KANEKO, Naohito

Administrative judge: IDE, Eiichiro

Administrative judge: TANAKA, Kyoko