

Appeal decision

Appeal No. 2015-12355

Cayman Islands

Appellant FOXCONN INTERCONNECT TECHNOLOGY LIMITED

Kanagawa, Japan

Patent Attorney IEIRI, Takeshi

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2014-67553 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 is configured as indicated in the Attachment 1, and the application for its registration was filed on August 11, 2014 with designated goods of Class No. 9 which are indicated in the Attachment 2.

2 Cited Trademark

Trademark Registration No. 2701839 (referred to as "Cited Trademark" below) cited in the reasons for refusal of the present application because the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act in the examiner's decision is configured as indicated in the Attachment 3. The application for its registration was filed on August 7, 1985, and the trademark was registered on December 22, 1994 with designated goods of Class No. 11 which are as specified in the Trademark Registry. After that, the designated goods' reclassification was registered to set the designated goods to "Power distribution or control machines and apparatus; rotary converters; phase modifiers; batteries and cells; electric or magnetic meters and testers; electric wires and cables; electric irons; electric hair curlers; electric buzzers; telecommunication machines and apparatus; electronic machines, apparatus and their parts; magnetic cores; resistance wires; electrodes" of Class No. 9 on August 3, 2005. In the trial for revocation of a part of the trademark, the decision of revocation such that "Digital cameras and their parts" in Class No. 9 in the designated goods should be invalidated. The decision become final and binding on February 9, 2010, and the registrations of renewal were twice. The trademark right is still valid as of now.

3 Judgment by the body

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

A The trademark in the Application

As indicated in the Attachment 1, the trademark in the Application consists of red characters of "Foxconn Interconnect Technology" written in the left part in an oval outline (referred to as "red character part" below) and large italic Alphabetic characters of "FIT" colored in blue written in a black outline on the right side of the red character part (referred to as "blue character part"). In the red character part, the Alphabetic characters which are

extremely smaller than those in the blue character part are displayed along the inner ring of the oval, and it can be said that the red character part has a relatively long character string as a whole formed of 29 characters. Whereas, in the blue character part, significantly large three Alphabetic characters are remarkably written in the horizontal direction in a color different from the red character part. Therefore, the color and the form of the red character part is obviously different from those of the blue character part, and both red and blue character parts are separately observed in appearance.

In addition, the blue character part is extremely remarkably expressed by using the bold blue characters so that it can be said that the blue character part attracts considerable attention of traders and consumers coming into contact with the trademark in the Application and has strong impression. In the field of the designated goods of the trademark in the Application, there is no circumstance in which the characters of "FIT" and "Foxconn Interconnect Technology" or the characters of "FIT" and "Foxconn" are widely known as integrated words or related words by the traders and the consumers.

Then, regarding the trademark in the Application, there are quite a few cases where the traders and the consumers coming into contact with the trademark in the Application recognize the blue character part as a distinguished part as a mark for distinguishing the source of goods and transact with a pronunciation and meaning derived from the blue character part.

Therefore, since the blue character part in the trademark in the Application consists of the Alphabetic characters of "FIT", in a case where the Alphabetic characters are understood as "fit" which is a widely familiar English word having the meaning of "adopt", the characters of "FIT" give rise to the pronunciation of "fitto" and the meaning of "adopt". In a case where the Alphabetic characters are understood as a coined word made by combining three Alphabetic characters of "F", "I", and "T", the Alphabetic characters give rise to the pronunciation of "efu-ai-ti" corresponding to the respective characters.

Therefore, the character part of "FIT" in the trademark in the Application gives rise to the pronunciation of "fitto" and the meaning of "adopt". In a case where the character

part gives rise to the pronunciation of "efu-ai-ti", no specific meaning is caused.

B Cited Trademark

Cited Trademark consists of Alphabetic characters of "FIT" as indicated in the Attachment 3. Therefore, in a case where the Alphabetic characters are understood as a widely familiar English word having the meaning of "adopt", the characters of "FIT" give rise to the pronunciation of "fitto" and the meaning of "adopt". In a case where the characters are recognized as a coined word made by combining three Alphabetic characters of "F", "I", and "T", the Alphabetic characters give rise to the pronunciation of "efu-ai-ti" corresponding to the respective characters.

Then, Cited Trademark gives rise to the pronunciation of "fitto" and the meaning of "adopt", and no specific meaning is caused in a case where Cited Trademark gives rise to the pronunciation of "efu-ai-ti".

C Similarity between the trademark in the Application and Cited Trademark

Since both of the blue character part in the trademark in the Application and Cited Trademark consist of the Alphabetic capital characters of "FIT" and configured of the same characters, both of them give impressions which are extremely approximate to each other in appearance. Furthermore, both of the blue character part in the trademark in the Application and Cited Trademark give rise to the pronunciation of "fitto" and the meaning of "adopt" or the pronunciation of "efu-ai-ti" and no specific meaning.

Then, in a case where the blue character part in the trademark in the Application and Cited Trademark are recognized as the coined word which consists of three Alphabetic characters, the meanings of them cannot be compared with each other. However, the blue character part in the trademark in the Application and Cited Trademark are similar to each other in appearance. Furthermore, both of them have the pronunciation of "fitto" or "efu-ai-ti" and have the meaning of "adopt" in common. Therefore, it should be said that the trademark in the Application and Cited Trademark are similar trademarks.

The designated goods of the trademark in the Application and the designated goods of Cited Trademark are as described in 1 and 2. The designated goods of the trademark in the Application are the same as or similar to "Power distribution or control machines and apparatus; rotary converters; phase modifiers; batteries and cells; electric wires and cables; telecommunication machines and apparatus (except for digital cameras and their parts); electronic machines, apparatus and their parts; magnetic cores; resistance wires; electrodes" in the designated goods of Cited Trademark.

Therefore, the trademark in the Application and Cited Trademark are similar to each other, and the designated goods of the trademark in the Application are the same as or similar to the designated goods of Cited Trademark. Accordingly, the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act.

(2) Appellant's allegation

A Appellant insists that since the trademark in the Application includes the characters of "Foxconn" indicating a member of "Foxconn Technology Group" which is the famous global company, there is no case where the source of the trademark in the Application is confused with that of Cited Trademark by paying attention only to the character part of "FIT" as overlooking the character part, and the trademark in the Application is constantly integrated with "Foxconn Interconnect Technology".

However, although it can be found that the characters of "Foxconn" have been known in the field of an electronic manufacturing service (Evidence A No. 4), the evidence cannot be found which is sufficient to recognize that the characters of "Foxconn" have been widely known by the traders and the consumers in the field of the designated goods of the trademark in the Application. The characters of "Foxconn Interconnect Technology" are written in the same font and same color and displayed in a string with small characters in an arc-like shape along the inner ring of the oval. Therefore, it is difficult to say that the character part of "Foxconn" gives a strong impression in appearance.

As described above, in the trademark in the Application, the characters of "FIT" are a part giving a strong impression to observers. It is reasonable to understand that the

characters of "FIT" give rise to the pronunciation and the meaning as a mark identifying the source of the product.

B Appellant insists that the trademark in the Application is not similar to Cited Trademark by indicating the registered trademark which coexists with Cited Trademark and the decision in which it is determined that the trademarks having the same pronunciations are not similar to each other.

However, the determination of the similarity between the trademarks should be individually and specifically made for the trademarks compared with each other. The examples of the registered trademark and the decision indicated by Appellant have characters in the trademarks different from those of this case, and the examples are different cases from this case. Since it is reasonable that it is determined as described in (1) regarding the trademark in the Application, the determination is not changed according to the example of the registration indicated by Appellant.

C Therefore, as described in A and B, the Appellant's allegations cannot be accepted.

(3) Conclusion

As described above, the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act and cannot be registered.

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

October 28, 2015

Chief administrative judge: HORIUCHI, Jinko

Administrative judge: SAKAI, Fukuzo

Administrative judge: URABE, Yoshie

Attachment

1 The trademark in the Application (Refer to the original in regard to color)



2 Designated goods of the trademark in the Application

"Electronic switches; cell switches [electricity]; control panels [electricity]; power distributing boxes; electric connectors; chargers for electric batteries; battery chargers; transformers [electricity]; converters, electric; voltage surge protectors; connectors [electricity]; plugs, sockets and other contacts [electric connections]; other power distribution or control machines and apparatus; rotary converters; phase modifiers; antennas; masts for wireless aerials; intercommunication apparatus; transponders; diaphragms [acoustics]; cabinets for loudspeakers; audio- and video-receivers; loudspeakers; horns for loudspeakers; microphones; sound transmitting apparatus; acoustic couplers; headphones; holders for electric coils; electromagnetic coils; acoustic coupling apparatus; other telecommunication machines and apparatus; filters for antennas; wireless apparatus; communication apparatus; image transmission apparatus; multi-function digital transmitter; amplifiers; graphic equalizers; choking coils [impedance]; inductors

[electricity]; mouse [computer peripheral]; printed circuit boards; light-emitting diodes [LED]; interfaces for computers; computer network servers; computer software for firewall; computer work stations (hardware); other electronic machines, apparatus and their parts; anti-interference devices [electricity]; data media (magnetic -); couplers [data processing equipment]; interface apparatus for computer network; communication apparatus with internet connection function; solar batteries; photovoltaic cells; identification threads for electric wires; materials for electricity mains [wires, cables]; copper wire, insulated; telephone wires; coaxial cables with filters; other coaxial cables; cables, electric; junction boxes [electricity]; optical fibers [fibres] [light conducting filaments]; cables (junction sleeves for electric -); cables (fibre [fiber (Am.)] optic -); other electric wires and cables; terminals [electricity]" in Class No. 9.

3 Cited Trademark

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