

Appeal decision

Appeal No. 2016-2997

Tokyo, Japan

Appellant

MITSUWA CO. LTD.

Tokyo, Japan

Patent Attorney

OKAMOTO, Toshio

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2015-30522 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 Attachment 1 was filed on April 1, 2015 by setting Class No. 30 and Class No. 43 are the designated goods and designated services, and a written amendment was filed on September 10, 2015 during the present examination, in which the designated goods and designated services are amended to Class No. 43 "Providing soba; providing udon; providing rice bowl dish; providing tempura; providing rice ball; providing vinegared rice wrapped in deep-fried bean curd; providing foods and beverages."

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 characters of '小諸そば(Komoro soba)' written with a brush-like style of handwriting, and it is recognized that expressing means for using characters written with a brush-like style of handwriting, modified obsolete hiragana characters, simplified characters, or a combination thereof is only one of 'expressing means which is usually used for emphasizing characters' used in a related field of soba. Further, characters of '小諸(Komoro)' have the meaning of 'the East of Nagano Prefecture, a city

in the southwest bottom of Mt. Asama'. Moreover, soba is actually produced and provided in areas around Komoro City, Nagano Prefecture, and soba has been one of specialties in Komoro City. Thus, even when the trademark in the Application is used in the designated services, consumers coming into contact with the trademark in the Application only recognize that the meaning of the service is 'providing foods and beverages mainly involving soba produced in Komoro City, Nagano Prefecture', the trademark in the Application solely indicates the quality of service in a common manner, and it is reasonable that the trademark in the Application is not recognized as a mark distinguishing relevant services from others. Therefore, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.", and rejected the Application.

3 Judgment by the body

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

As described in Attachment 1, the trademark in the Application consists of characters of "小諸" representing the area of "the East of Nagano Prefecture, a city in the southwest bottom of Mt. Asama" ("KOJIEN, 6th edition", Iwanami Shoten), and "そば", and "小諸そば" are written with a brush-like style of handwriting in horizontal writing.

In the trade of designated services of the Application, it is a common manner that characters of "そば" are indicated in modified obsolete hiragana characters or written with a brush-like style of handwriting, and this fact can be recognized by Attachment 2 in which examples of using characters of "そば" for short split curtains and signs of soba shops are described.

Thus, it is reasonable to understand that the trademark in the Application is indicated in common manner in the trade of designated services.

In the case, when the trademark in the Application is used in the designated services, it only refers to "providing soba produced and sold in Komoro City"; namely, the quality of services or articles to be used in such provision.

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

(2) Appellant's allegation

Appellant alleges that " the trademark in the Application, the character of 'そ' is not a modified obsolete hiragana character, but has an 'original character' having a shape from which a kanji of '代' can be imaged, the 'original character' exceeds a level of 'expressing means which is usually used for emphasizing characters', and the trademark

in the Application is not applicable to the 'trademark consisting solely of a mark indicating the location of production or provision of services according to the Application in common manner'".

However, in the trade of designated services of the Application, it is obvious that modified obsolete hiragana characters are used in the sign of a shop, from actual use condition indicated in Attachment 2, each of shapes of characters is slightly different in the example of use, and it is not said that characters having the same shape are used.

Further, since consumers of designated services of the Application are common consumers of men and women of all ages, it can hardly be said that the consumers obviously understand a difference in modified obsolete hiragana characters which are usually not seen and can recognize the difference, and as described in above (1), since it is reasonable that the trademark in the Application is characters of "小諸そば" indicated in a common manner in the trade of designated services, appellant's allegation cannot be accepted.

(3) Summary

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

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

June 28, 2016

Chief administrative judge: YAMADA, Masaki

Administrative judge: NAKATSUKA, Toshie

Administrative judge: OIDE, Masao

Attachment

1 The trademark in the Application



2 Example of using modified obsolete hiragana characters of "そば"

(1) On a website of "Kamakura City Hall", under the title of "Introduction of shops in

Kamakura - soba Yoshimura, there is posted a picture of a sign of modified obsolete hiragana characters of "きそば".

(<https://www.city.kamakura.kanagawa.jp/shoukou/omise2006/data/0481.html>)

(2) On a website of "soba Hinodeya", there is posted a picture of a short split curtain of modified obsolete hiragana characters of "生そば".

(<http://www.soba-hinodeya.com/>)

(3) On a website of "Series of Food Voice", under the title of "103rd Modified obsolete hiragana characters are matched in short split curtain of soba shop", there is posted a picture of a short split curtain of modified obsolete hiragana characters of "そば" and the like.

(http://fv1.jp/chomei_blog/?p=1961)

(4) On a website of "Go! Go!, to sign of soba", under the title of "Sign collection of soba", there are posted many pictures of signs in which modified obsolete hiragana characters are used.

(<http://kisoba.go-go-ponta.com/>)