

Appeal decision

Appeal No. 2016-10976

Tokyo, Japan

Appellant UENO CO. LTD.

Tokyo, Japan

Patent Attorney OSHIMA, NISHIMURA & MIYANAGA PPC

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2014-104179 has resulted in the following appeal decision:

Conclusion

The examiner's decision is revoked.

The trademark in the Application shall be registered.

Reason

1 The trademark in the Application

The trademark in the Application consists of the standard characters of "FLYING TIGERS", and the application for its registration was filed on December 10, 2014 by setting the goods described in the application belonging to Class Nos. 18 and 25 as the designated goods. After that, the designated goods were amended to Class No. 25 "Clothing; Masquerade costumes" by the written amendment submitted on May 1, 2015 in the original examination.

2 Outline of reasons for refusal stated in the examiner's decision (gist)

The trademark in the Application is a trademark similar to the trademark "FLYING TIGER COPENHAGEN" (referred to as "Cited Trademark" below) used by ZEBRA Aktieselskab in Copenhagen, Denmark for its goods. According to newspaper articles, it can be acknowledged that the first shop in Japan opened in Minami, Osaka in 2012, was flooded with customers so that the shop was temporarily closed due to short supply, and after that, by November, 2014 shops were opened in downtowns in Japan

and large shopping centers, such as Omotesando in Tokyo, a shopping center "LaLaport Tokyo-BAY" in Funabashi in Chiba, Sannomiya in Kobe, and Shijo-Kawaramachi in Kyoto, and have been gaining popularity. Therefore, it is reasonable to determine that Cited Trademark had been widely recognized by traders and consumers before the registration of the trademark in the Application.

According to information obtained on the Internet, in the shops of "FLYING TIGER COPENHAGEN," goods such as "scarves," "gloves and mittens," "ear muffs," "headgear for wear," "socks," "full-body tights," and "masquerade hats" are handled. Therefore, it can be concluded that Cited Trademark has been widely recognized by traders and consumers regarding the goods "Clothing, Masquerade costumes."

Therefore, the trademark in the Application is similar to Cited Trademark which has been widely recognized by consumers and used for the goods the same as or similar to the goods described above. Therefore, the trademark in the Application is in breach of Article 4(1)(x) of the Trademark Act.

3 Judgment by the body

(1) As described in 1, the trademark in the Application consists of the standard characters of "FLYING TIGERS", and its designated goods are set to Class No. 25 "Clothing, Masquerade costumes."

(2) According to the newspaper article information and the internet information cited in the original examination and the investigation by ex officio in the body, the shop "FLYING TIGER COPENHAGEN" operated by Zebra Japan Inc. having a capital relationship with ZEBRA Aktieselskab was introduced as follows. "Northern Europe Danish general merchandise shop, the first shop in Japan opened in Amerikamura in Minami, Osaka last July was flooded with customers so that the shop was temporarily closed due to short supply" (SANKEI SHIMBUN, morning edition in Tokyo, September 25, 2013), "Danish general merchandise shop for inexpensive products 'FLYING TIGER COPENHAGEN' opened in Jingumae, Tokyo last October. ... In addition to commodities and stationery, about 1500 kinds of goods including handicraft products and masquerade goods are sold, and the prices of the goods are around 300 yen. ... This is the second shop after the shop in Osaka opened the year before last. The shop is so popular that the customers cannot enter the shop on weekends and numbered tickets are issued." (YOMIURI SHIMBUN TOKYO, morning edition, January 26, 2014), "Danish general merchandise shop triggered the low-price boom...in the shop

having two floors, Northern European colorful and pop daily articles are displayed close together. ... The shop opened in July the year before last. Since this is the first shop in Japan, the shop was flooded with customers at first so that the shop was temporarily closed. About 550,000 customers have visited the shop in a year, and the shop moved into Tokyo last autumn. The shop in Amerikamura is full and lively with many customers even now. The name of the shop is 'FLYING TIGER COPENHAGEN.' " (SANKEI SHIMBUN, morning edition in Osaka, March 4, 2014), and "Danish general merchandise chain store 'FLYING TIGER COPENHAGEN' which gains popularity in Osaka and Tokyo is going to open its first shop in Hyogo on Sannomiya center street in Kobe on August 14.... FLYING TIGER COPENHAGEN has opened some 300 shops in the world. Five shops were opened in Japan, in three prefectures; i.e., Tokyo, Osaka, and Chiba. Northern European unique design and colorful daily articles gain popularity with women." (Kobe Shimbun, morning edition, June 26, 2014). Each news article stated that FLYING TIGER COPENHAGEN gains popularity as a Danish general merchandise shop, and it can be recognized that the shop has become a topic in some areas to a certain degree. However, even though Cited Trademark has been known for a certain degree as the name of the Danish general merchandise shop, the shop handles about 1500 kinds of goods, such as handicraft products and masquerade goods, in addition to commodities and stationeries. Therefore, in view that the goods such as "scarves," "gloves and mittens," "ear muffs," "headgear for wear," "socks," "full-body tights," and "masquerade hats" which are the same as or similar to the designated goods are handled as one of many goods, it cannot be acknowledged that Cited Trademark was widely recognized by customers as the trademark indicating the origin of the goods at the time of application for the registration of the trademark in the Application.

Also, despite the investigation by ex officio in the body, the fact sufficiently indicating that Cited Trademark was widely recognized by customers regarding the goods and services the same as or similar to the designated goods of the trademark in the Application at the time of application for the registration of the trademark in the Application could not be found.

(3) As described above, Cited Trademark cannot be recognized as a trademark which is widely recognized by customers regarding the goods and services the same as or similar to the designated goods of the trademark in the Application at the time of application for the registration of the trademark in the Application. Therefore, it cannot be said that the trademark in the Application falls under Article 4(1)(x) of the Trademark Act and other predetermined requirements without examining the above Article.

No other reason for refusal is found with respect to the application.
Therefore, the appeal decision shall be made as described in the conclusion.

November 28, 2016

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| Chief administrative judge: | HAYAKAWA, Fumihiro |
| Administrative judge: | TAMURA, Masaaki |
| Administrative judge: | ASO, Hiroki |