

Appeal decision

Appeal No. 2016-15387

Republic of Mauritius

Appellant ASPEN GLOVAL INC.

Tokyo, Japan

Patent Attorney SEKIGUCHI, Kazuya

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2015-32604 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 standard characters of "ALULA", and the application for its registration was filed on April 7, 2015 by setting Class No. 5 "Dietetic food adapted for medical purposes; dietetic beverages adapted for medical purposes; food for babies; dietary supplements for humans; lacteal flour for babies." and Class No. 29 "Milk products" as the designated goods.

2 Cited Trademark

The registered trademark cited in reasons for refusal of the examiner's decision of the present application because the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act is as follows, and is still valid as of now.

(1) International Trademark Registration No. 731917 (referred to as "Cited Trademark 1" below) consists of characters of "ARLA" and claims priority under the Paris Convention Article 4 based on the trademark registration applied in Denmark on October 1, 1999. The international application for trademark registration was filed on March 20, 2000, and the establishment of the trademark right was registered on July 13, 2001 with the designated goods of Classes No. 1, 5, 29 to 32 which are as specified in the Trademark Registry regarding the trademark right based on the international

registration.

(2) International Trademark Registration No. 747550 (referred to as "Cited Trademark 2" below) is configured as indicated in Attachment 1, and the international application for trademark registration was filed on October 4, 2000, and the establishment of the trademark right was registered on February 22, 2002 with the designated goods of Classes No. 1, 5, 29, 30, and 32 which are as specified in the Trademark Registry regarding the trademark right based on the international registration.

(3) International Trademark Registration No. 731917 (referred to as "Cited Trademark 3" below) consists of characters of "ARLA", and the international application for trademark registration was filed on September 10, 2001 (subsequent designation). The establishment of the trademark right was registered on January 31, 2003 with the designated goods of Class No. 29 which are as specified in the Trademark Registry regarding the trademark right based on the international registration.

(4) International Trademark Registration No. 990596 (referred to as "Cited Trademark 4" below) is configured as indicated in Attachment 2 and claims priority under the Paris Convention Article 4 based on the trademark registration applied in Denmark on May 21, 2008. The international application for trademark registration was filed on September 8, 2008, and the establishment of the trademark right was registered on February 25, 2011 with the designated goods of Classes No. 1, 5, 29 to 32 which are as specified in the Trademark Registry regarding the trademark right based on the international registration.

Hereinafter, Cited Trademarks 1 to 4 may be collectively referred to as "Cited Trademark".

3 Judgment by the body

(1) The trademark in the Application

As described in 1, the trademark in the Application consists of the characters of "ALULA". The characters form an English word which means "a bastard wing". However, the word is not generally known as "a bastard wing" in Japan, and is understood as a coined word having no specific meaning. Therefore, when the word is pronounced, it is reasonable to say that the word "ALULA" is pronounced as following the pronunciation written in Roman characters which is familiar in Japan or the pronunciation in English.

Then, the trademark in the Application gives rise to the pronunciation of "arura" according to the constituent characters.

Furthermore, the characters of "ALULA" are understood as a coined word

having no specific meaning. Therefore, the trademark in the Application has no specific meanings.

(2) Cited Trademark

A Regarding Cited Trademarks 1 and 3

As described in (1) and (3) in 2, Cited Trademarks 1 and 3 consist of the characters of "ARLA". This word is not contained in general dictionaries and is understood as a coined word having no specific meaning. Therefore, it is reasonable to say that the word "ARLA" is pronounced as following the pronunciation written in Roman characters which is familiar in Japan or the pronunciation in English.

Then, Cited Trademarks 1 and 3 give rise to the pronunciation of "aara" according to the constituent characters.

Furthermore, as described above, the characters of "ARLA" are understood as a coined word having no specific meaning. Therefore, Cited Trademarks 1 and 3 have no specific meanings.

B Regarding Cited Trademarks 2 and 4

As indicated in Attachment 1, Cited Trademark 2 has a structure in which a figure like a yellow flower is arranged in the upper right part of a green elliptical figure which rises to the right, and the characters of "Arla" are defined by outlines almost at the center of the elliptical figure. As indicated in Attachment 2, Cited Trademark 4 has a structure in which a figure like a yellow flower is arranged to be overlapped with the center of a green elliptical figure and the characters of "Arla" are defined by outlines at the center of the elliptical figure.

Regarding Cited Trademarks 2 and 4, the circumstance is not recognized such that the figure part and the entire character part or only the figure part have an idea and a pronunciation and the idea and the pronunciation contribute transactions.

Therefore, in both of Cited Trademarks 2 and 4, it can be said that the character part of "Arla" which is largely and remarkably written at the center may attract attention and this may contribute the transactions.

In the character parts of Cited Trademarks 2 and 4, the characters of "Arla" are not contained in general dictionaries, and is understood as a coined word having no specific meaning. Therefore, it is reasonable to say that the word "Arla" is pronounced as following the pronunciation written in Roman characters which is familiar in Japan or the pronunciation in English.

Then, Cited Trademarks 2 and 4 give rise to the pronunciation of "aara" according to the constituent characters in the configuration.

Furthermore, as described above, the characters of "Arla" is understood as a

coined word having no specific meaning. Therefore, Cited Trademarks 2 and 4 have no specific meanings.

(3) Similarity between the trademark in the Application and Cited Trademark

A Regarding Cited Trademarks 1 and 3

The trademark in the Application and Cited Trademarks 1 and 3 commonly have the character "A" at the beginning of the word and the characters of "LA" at the end of the word in terms of appearance. However, the number of the characters and spelling of the middle part are different ("LU" and "R"), and it is reasonable to say that the trademark in the Application and Cited Trademarks 1 and 3 can be clearly distinguished from each other according to the visual impressions received from the appearances. Therefore, the trademark in the Application and Cited Trademarks 1 and 3 are distinguishable from each other in terms of appearance.

Next, regarding the pronunciations, when the pronunciation of "arura" caused from the trademark in the Application is compared with the pronunciation of "aara" caused from Cited Trademarks 1 and 3, one syllable of three syllables, which form the short word, is different. Furthermore, when each of the words is pronounced in series, the tones and the sounds of the words in the trademark in the Application and Cited Trademarks 1 and 3 are different from each other. Therefore, the trademark in the Application and Cited Trademarks 1 and 3 are distinguishable from each other in terms of pronunciation.

In addition, regarding the meanings, since the trademark in the Application and Cited Trademarks 1 and 3 have no specific meanings, the trademark in the Application and Cited Trademarks 1 and 3 are distinguishable from each other in terms of meanings.

Accordingly, the trademark in the Application and Cited Trademarks 1 and 3 are distinguishable and are not similar to each other in terms of any of appearance, pronunciation, and meanings.

B Regarding Cited Trademarks 2 and 4

The trademark in the Application and Cited Trademarks 2 and 4 have a clear difference such that the presence/absence of the figure in terms of appearance. Therefore, the trademark in the Application and Cited Trademarks 2 and 4 are distinguishable from each other in terms of appearance.

Furthermore, even when the character part in the configuration attracts attention to contribute the transactions, the character parts of the trademark in the Application and Cited Trademarks 2 and 4 are distinguishable and are not similar to each other in terms of any of appearance, pronunciation, and meanings as same as the judgment in A.

(4) Summary

As described above, the examiner's decision, such that the trademark in the Application falls under Article 4(1) (xi) of the Trademark Act, made because the trademark in the Application is similar to Cited Trademark is not reasonable, and the examiner's decision shall be definitely cancelled.

No reason for refusal about the application is found.

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

January 17, 2017

Chief administrative judge: OMORI, Kenji

Administrative judge: ITAYA, Reiko

Administrative judge: MATSUURA, Yukiko

Attachment 1 (Cited Trademark 2) *Refer to the original in regard to color



Attachment 2 (Cited Trademark 4) *Refer to the original in regard to color

