

Appeal decision

Appeal No. 2017-2498

Appellant HITACHI CONSTRUCTION MACHINERY CO. LTD.

Patent Attorney

Patent Attorney

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2015-29999 has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reasons

1 The trademark in the Application

As indicated in Attachment 1(1), the trademark in the Application is a color mark specified from the description in "Trademark for Which Registration Is Sought" in the request for trademark application and the description in "Detailed Description of Trademark" in Attachment 1(2). The registration application was filed on April 1, 2015 by setting Class 7 "Oil hydraulic shovels; coal loaders; loaders for traveling with wheels; wheel loaders; road rollers." and Class 12 "Dump trucks for mines." as the designated goods. Thereafter, the designated goods were amended to Class 7 "Oil hydraulic shovels." by the Written Amendment filed on February 29, 2016 in the original examination and the Written Amendment filed on February 21, 2017 in the body. The "Detailed Description of Trademark" was amended as described in Attachment 1(3) by the Written Amendment filed on February 21, 2017 in the body.

2 Gist of reasons for refusal stated in the examiner's decision

As described in (1) to (3) below, the Examiner's decision acknowledged and determined that "The trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.", "The trademark in the Application does not meet the requirement of Article 3(2) of the Trademark Act.", and "The trademark in the Application does not

meet the requirement of Article 5(5) of the Trademark Act.", and rejected this application.

(1) Regarding applicability of Article 3(1)(iii) of the Trademark Act

The trademark in the Application is only a color mark specified from the description in the trademark description field and the description of the Detailed Description of Trademark. In many cases, the color used for the goods is selected to improve attractivity of the goods or the like, cannot be displayed the source of goods, and cannot be recognized as a mark for distinguishing relevant products from others. Then, whether or not the trademark functions as a mark identifying the source should be determined according to whether or not consumers coming into contact with the trademark recognizes the trademark as a mark identifying the source regardless of choice of the trademark by the Applicant or intention of use by the Applicant. Even if various companies usually use corporate colors for their leading products and the Applicant uses the color of the trademark in the Application as a so-called corporate color, this does not make it possible to determine that the trademark in the Application functions as a mark identifying the source. Then, even if the trademark in the Application is used for its designated goods, traders and consumers coming into contact with this only recognize that the trademark in the Application represents a color that is usually used or may be used for the goods, and the trademark in the Application only simply displays the feature of the goods by a method usually used.

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

(2) Regarding non-applicability of Article 3(2) of the Trademark Act

The Applicant has continuously used a color that is recognized to be the same as the color of the trademark in the Application for oil hydraulic shovels among its designated goods for about 40 years, at least since 1977. It is acknowledged that, regarding other goods, the color that is recognized to be the same as the color of the trademark in the Application for its designated goods has been used since around 2000 at the latest, and it is shown that the sales area thereof extend across Japan. Furthermore, it is acknowledged that the applicant has continuously made advertisements in magazines, TVs, or the like since 1977. However, there are actual circumstances in which a person other than the Applicant has sold goods to which a color the same as or similar to the trademark in the Application is applied. In addition, characters of "HITACHI" or the like are applied to the goods using the color of the trademark in the Application. Usually, it is estimated and acknowledged that consumers identify the goods by using these characters as an earmark, and thereby, it is

difficult to determine that only the color of the trademark in the Application independently functions as a mark for distinguishing relevant products from others. In addition, the recognition regarding the color of the trademark in the Application by consumers cannot be objectively grasped. Therefore, even if the evidences submitted by the Applicant are wholly examined, it cannot be acknowledged that the trademark in the Application came to be a trademark by which consumers are able to recognize the goods as being connected with a certain person's business as a result of the use of the trademark in the Application.

Therefore, the trademark in the Application does not meet the requirement of Article 3(2) of the Trademark Act

(3) Regarding compatibility to Article 5(5) of the Trademark Act

The color name "Taxi Yellow" described in the "Detailed Description of Trademark" in the request for trademark application is a color name uniquely used by the Applicant, and the color name is not acknowledged as a display that evokes a specific color in general.

Therefore, the present application does not meet the requirement of Article 5(5) of the Trademark Act.

3 Ex officio examination of evidence in the body

As a result of Ex officio examination of evidence in the body regarding whether or not the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, the fact in Attachment 2 was found. Therefore, the result was notified to the Appellant (notice of examination of evidence dated on January 29, 2019), and an opportunity for stating an opinion within a designated period was given, in accordance with Article 150(5) of the Patent Act which is applied mutatis mutandis in the provisions of Article 56(1) of the Trademark Act.

4 Opinion of the Appellant with respect to examination of evidence (gist)

Regarding circumstances of whether or not another company using a mark same as or similar to the trademark in the Application exists, even if a color painted on an outer surface of a product indicated in the notice of examination of evidence is similar to the trademark in the Application, this does not affect distinctiveness of the trademark in the Application with respect to consumers of oil hydraulic shovels acquired through the use by the Applicant.

Furthermore, regarding these products, a distribution amount is significantly smaller than that in the entire market scale of the designated goods "oil hydraulic

shovels" of the trademark in the Application, or consumers are different from consumers of the designated goods "oil hydraulic shovels" of the present application, or the color painted on the outer surface is different from the trademark in the Application.

In addition to this point, the number of companies that enter in the market of the oil hydraulic shovels is small. Furthermore, as indicated by Evidence A No. 23 submitted on February 21, 2017 that complements the written request for trial submitted on February 21, 2017, each company has already sold the oil hydraulic shovels using a specific color and has been recognized by consumers. Therefore, even if the Applicant occupies the color of the trademark in the Application, a room for choice of design of other companies is not unreasonably narrowed.

In view of these circumstances, regardless of the fact that the products indicated in Attachment 2 were confirmed on the websites, the right given to the Applicant for the designated goods "oil hydraulic shovels" by the registration of the trademark in the Application does not unreasonably limit activities of other companies in the market.

5 Judgment by the body

(1) Regarding Article 5(5) of the Trademark Act

As a result of amending the Detailed Description of Trademark as indicated in Attachment 1(3), the color becomes explicit. Accordingly, the present application came to meet the requirement of Article 5(5) of the Trademark Act.

(2) Regarding Article 3(1)(iii) of the Trademark Act

As indicated in Attachment 1(1) and 1(3), the trademark in the Application is a trademark consists of a color of "orange (Munsell value: 0.5YR5.6/11.2)", and the designated goods thereof are set to Class 7 "Oil hydraulic shovels."

Incidentally, the color is selected to improve an aesthetic impression and attraction of the goods in advertisement of the goods or the like, in addition to the goods and packages thereof, and it is reasonable to assume that the color is not recognized as a mark indicating the source of goods or a mark for distinguishing relevant products from others.

Then, in the industry handling construction machines including the designated goods "oil hydraulic shovels" of the trademark in the Application, a color similar to the color of the trademark in the Application "orange" is usually used for products of various construction machines in fact (Attachment 2).

Then, even if the trademark in the Application that consists of only the color of orange (Munsell value: 0.5YR5.6/11.2) is used for the designated goods, consumers

coming into contact with this only recognize that this indicates the color that is usually used or may be used in order to improve an aesthetic impression and attraction of the goods rather than recognizing this as a so-called corporate color alleged by the Appellant. It should be said that consumers do not recognize the color as a mark indicating the source of goods or a mark for distinguishing relevant products from others.

Therefore, the trademark in the Application consists of only a mark displaying the feature (color) of the goods by a method usually used and falls under Article 3(1)(iii) of the Trademark Act.

(3) Regarding function for distinguishing relevant products from others through use of the trademark in the Application

In the written opinion (referred to as "Opinion 1" below) filed on February 29, 2016 in the original examination, the written request for trial (referred to as "written request" below) filed on February 21, 2017, and the written opinion (referred to as "Opinion 2" below) filed on March 18, 2019, the Appellant (applicant)(referred to as "Appellant" below) alleged that "because the color of the trademark in the Application attracts attention of traders and consumers and gives a strong impression on traders and consumers, the trademark in the Application independently acquired the function for distinguishing relevant products from others through longtime use by the Appellant and falls under Article 3(2) of the Trademark Act". However, on the premise of that, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act as described in (2) above.

Therefore, with reference to the allegation in Opinion 1, the written request, and Opinion 2 submitted by the Appellant and evidence materials submitted with Supplemental statement of proceedings dated March 1, 2016 in the original examination, Supplemental statement of proceedings dated February 21, 2017 in the body, and Supplemental statement of proceedings dated March 19, 2019 (Evidence A No. 1 to A No. 30)(including their branch numbers)(for example, abbreviated and indicated, for example, as "A-1" below), the function for distinguishing relevant products from others through use of the trademark in the Application (Applicability of Article 3(2) of the Trademark Act to the trademark in the Application) will be discussed below.

A Regarding Article 3(2) of the Trademark Act

Regarding the object of Article 3(2) of the Trademark Act such that even a predetermined trademark according to Article 3(1)(iii) of the Trademark Act by which consumers are able to recognize the goods (services) as being connected with a certain person's business as a result of the use of the trademark can be registered as a trademark,

in a case where a particular person has a record of exclusively and continuously using the trademark as a mark for distinguishing relevant goods (service) related to the business of the person from others for a long time without being used by others, it can be said that the exclusive use of the trademark by the particular person is allowed in effect in the business field of the goods (service). Therefore, it is understood that a request for public interest of giving opportunities of use to other companies decreases, and the trademark acquires the function for distinguishing relevant goods (service) from others, and accordingly, the trademark comes to have the function as a trademark (rendition of decision on April 10, 2007, 2006 (Gyo-Ke) 10450, the determination by Intellectual Property High Court 4th Board)(underline is applied by collegial body).

Therefore, whether or not the trademark in the Application meets the requirement of Article 3(2) of the Trademark Act is determined below with reference to the above determination.

B Regarding the allegation in Opinion 1, the written request, and Opinion 2 submitted by the Appellant and the evidence materials (A-1 to A-30) (including their branch numbers)

(A) Regarding the Appellant

The Appellant is a company, which was established on October 1, 1970, of which the business purpose is "manufacturing, sales, rental, and after-sales service of construction machines, transporting machines, environment-related products, or the like", the stated capital is 8,157,6590,000 yen, and the non-consolidated number of employees is 4,341 (refer to corporate profile in Applicant's website, as of March 31, 2019).

(B) Regarding use start timing, use period, and use region of the designated goods "oil hydraulic shovels" to which the trademark in the Application is applied and the goods "mini shovels" submitted by the Appellant as the evidence (Although "mini shovel" is an unclear product, it is determined below as assuming that "small rotary oil hydraulic shovels" submitted by the Appellant fall under "mini shovels.").

The trademark in the Application consists of only the color of "orange (Munsell value: 0.5YR5.6/11.2)" as indicated in Attachments 1(1) and 1(3).

Then, the Appellant has continuously used the trademark in the Application as the color painted on the outer surface of the designated goods "oil hydraulic shovels" since 1974 or "mini shovels" since 1991 (A-1-1 to A-1-44, A-2-2, A-4-1 to A-4-4, A-8-1).

Furthermore, the Appellant sells the goods "oil hydraulic shovels" or "mini shovels" to which the trademark in the Application is applied across Japan (A-4-2 and A-4-4).

(C) Sales volume and market share of oil hydraulic shovels and mini shovels to which the trademark in the Application is applied

The sales volumes of the oil hydraulic shovels to which the trademark in the Application is applied were 2,286 in 1974, 2,864 in 1975, 3,077 in 1976, 3,875 in 1977, 5,177 in 1978, 5,954 in 1979, 5,839 in 1980, 5,136 in 1981, 5,222 in 1982, 5,827 in 1983, 6,206 in 1984, 6,169 in 1985, 7,049 in 1986, 9,712 in 1987, 13,068 in 1988, 14,380 in 1989, 13,786 in 1990, 11,586 in 1991, 9,697 in 1992, 9,740 in 1993, 11,024 in 1994, 10,393 in 1995, 11,583 in 1996, 9,495 in 1997, 8,011 in 1998, 8,688 in 1999, 8,215 in 2000, 5,001 in 2001, 3,918 in 2002, 4,922 in 2003, 5,658 in 2004, 5,951 in 2005, 6,339 in 2006, 7,029 in 2007, 4,329 in 2008, 2,535 in 2009, 2,756 in 2010, 4,511 in 2011, 5,510 in 2012, 8,928 in 2013, and 6,956 in 2014 (A-4-1).

Furthermore, the sales volumes of the mini shovels to which the trademark in the Application is applied were 3,386 in 1991, 3,858 in 1992, 4,399 in 1993, 4,802 in 1994, 4,527 in 1995, 5,138 in 1996, 4,284 in 1997, 3,455 in 1998, 3,505 in 1999, 3,296 in 2000, 2,608 in 2001, 1,763 in 2002, 1,987 in 2003, 2,273 in 2004, 2,293 in 2005, 2,714 in 2006, 3,021 in 2007, 1,789 in 2008, 1,225 in 2009, 1,474 in 2010, 2,135 in 2011, 2,469 in 2012, 3,319 in 2013, and 3,769 in 2014 (A-4-3).

Moreover, the market shares of the oil hydraulic shovels alleged by the appellant were 15.7% in 1974 and 22.2% in 2014, and the market shares of the mini shovels were 6% in 1991 and 11% in 2014 (A-4-1 to A-4-4).

(D) Regarding method, the number of times, and content of advertisement

The Appellant provided advertisement including an image of the oil hydraulic shovels or the mini shovels to which the trademark in the Application is applied in magazines in the field of construction machines such as "E-Contecture", "Nikkei construction", "Construction Planning", "Construction machine", and "Construction mechanization" 31 times (A-5-1 to A-5-18, A-7-1 to A-7-13).

Furthermore, the Appellant broadcasted TV commercials that display the oil hydraulic shovels or the mini shovels to which the trademark in the Application is applied in September 1990, February and September 1991, July and December 1993, November 1995, January 1997 to June 1998, February 1997 to June 1998, August 1998 to September 1999, May 2000 to September 2001, October 2007 to September 2010, November 2010 to September 2012, November 2012 to October 2014, and November 2014 (A-6-1 to A-6-4, A-22-1 to A-22-7).

(E) Regarding questionnaire survey

In order to indicate that only the color of the trademark in the Application independently functions as a mark for distinguishing relevant products from others and to objectively recognize the recognition of the color of the trademark in the Application by traders and consumers of the oil hydraulic shovels, the Appellant requested Rakuten Research, Inc. and conducted the questionnaire survey for workers in the construction industry in 2017 (A-19).

According to "-Report- the questionnaire survey regarding the colors of the oil hydraulic shovels" (A-19), the investigation target of this questionnaire is traders and consumers of the oil hydraulic shovels in Japan. As a result of sending the questionnaires to workers in the construction industry at 502 locations, the workers in the construction industry at 193 locations answered the questionnaires.

Then, the workers in the construction industry at 185 locations among 193 locations (recognition rate 95.9%) answered that the oil hydraulic shovels to which the trademark consisting of only the orange color are the goods of "Hitachi Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd.", "Hitachi, Ltd.", or the like (A-19).

C Judgment

According to B above, the Appellant is a company that was established in 1970 and manufactures and sells construction machines and transporting machines including the designated goods "oil hydraulic shovels" of the trademark in the Application. The appellant started to use "orange" as the color painted on the outer surface of the goods "oil hydraulic shovels" in 1974 and has sold the oil hydraulic shovels across Japan and started to use "orange" as the color painted on the outer surface of the mini shovels in 1991 and has sold the mini shovels across Japan. The sales volumes of the oil hydraulic shovels were 2,286 in 1974 and 6,956 in 2014, and the sales volumes of the mini shovels were 3,386 in 1991 and 3,769 in 2014. The market shares of the oil hydraulic shovels alleged by the Appellant were 15.7% in 1974 and 22.2% in 2014, and the market shares of the mini shovels were 6% in 1991 and 11% in 2014. The advertisements including the image of the oil hydraulic shovels or the mini shovels to which the trademark in the Application is applied have been provided in the magazines in the construction machine field, the TV commercials, or the like. In the questionnaire survey conducted by the appellant in 2017, the workers in the construction industry at 185 locations answered that the oil hydraulic shovels to which the trademark consisting only the color of orange is applied are the goods of

construction machine manufacturers such as "Hitachi Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd.", "Hitachi, Ltd.", or the like. These facts are acknowledged by the evidences submitted by the Appellant.

However, (A) as described in Attachment 2, a color similar to orange that is the color of the trademark in the Application is usually used for goods of various construction machines in actuality, (B) although it is acknowledged that the color that is acknowledged to be the same as the trademark in the Application is used as the color painted on the outer surface of the oil hydraulic shovels or the mini shovels in goods catalogs issued by the Appellant (A-1-1 to A-1-44, A-2-2, and A-8-1 to A-8-15), because, together with the color, characters of a using model or the like are used on a building cover of the oil hydraulic shovels (A-1-1 to A-1-9, A-1-11, A-1-12, A-1-15, A-1-16, and A-1-19 to A-1-21, A-2-2, A-8-1 to A-8-3, A-8-6, A-8-7, A-8-9, and A-8-10), characters of a using model or the like are used on a cover from the lower side to the rear side of the seat of the vehicle body of the mini shovel (A-1-22 to A-1-24, A-1-26 to A-1-41, A-1-43, and A-1-44), the characters of "HITACHI" are used on a boom of the oil hydraulic shovel (A-1-1 to A-1-21), the characters of "HITACHI" are used on a boom of the "mini shovel" (A-1-27, A-1-28, A-1-30, A-1-31, and A-1-37 to A-1-42), the characters of "HITACHI" are used on a counterweight portion of the oil hydraulic shovel (A-1-12, A-1-16, A-8-3, A-8-6, A-8-10, and A-8-12), the characters of "HITACHI" are used on a cover portion from the lower side to the rear side of the seat of the vehicle body of the mini shovel (A-1-22, A-1-28, A-1-34 to A-1-36, A-1-39, and A-1-41), it can be said that traders and consumers coming into contact with this naturally pay attention to the characters of the using model or the like and the characters of "HITACHI" displayed on the goods, (C) the evidence material regarding the sales volume and the market share of the oil hydraulic shovels or the mini shovels are those up to 2014, and the sales volume and the marker share in and after 2015 and up to present cannot be confirmed, and in addition, it cannot be confirmed whether or not the market share for each year alleged by the Appellant is correct because the number of "demands" described in "the sales volume of the oil hydraulic shovels for each year" (A-4-1) and "the sales volume of the mini shovels for each year" (A-4-3) is not endorsed, (D) the advertisements of the oil hydraulic shovels or the mini shovels to which the trademark in the Application is applied were provided in the magazines in the field of construction machines about 31 times, and the circulation and number of copies sold of the magazines in which the advertisements was provided are unknown (A-5-1 to A-5-18 and A-7-1 to A-7-13), (E) a period is limited in which the TV commercials regarding the oil hydraulic shovels or the mini shovels to which the trademark in the

Application is applied were broadcasted (A-6-1 to A-6-4), (F) as described that "valid responses indicating 'Hitachi Construction Machinery Japan Co., Ltd.' that is a sales subsidiary, '日立 (kanji of HITACHI)', 'ヒタチ (katakana of HITACHI)', and 'HITACHI' in addition to 'Hitachi Construction Machinery Co., Ltd. are determined as recognizing Hitachi Construction Machinery Co., Ltd." in "recognition determination criteria" of "1. Outline of investigation" ("1" is a Roman numeral) according to "- Report- the questionnaire survey regarding the colors of the oil hydraulic shovels by Rakuten research, Inc." (A-19), the number of workers in the construction industry who recognized only the Appellant (Hitachi Construction Machinery Co., Ltd.) and answered the "survey sheet" is unclear, and it cannot be directly determined that the recognition rate of 95.9% (A-19) is an appropriate value, (G) although it can be estimated and acknowledged that a large number of traders and consumers of the construction machines exist because the goods in the field of construction machines are not limited to the oil hydraulic shovels and variety of goods exist, the workers in the construction industry who are targets of the questionnaire survey are limited to traders and consumers of the oil hydraulic shovels, and (H) it cannot be said that 502 locations that is the number of workers in the construction industry to be targets of the questionnaire survey and the number of answers 193 locations (A-19) are large numbers, and it cannot be directly said that the investigation result reflects actual recognition by traders and consumers of the construction machine. Accordingly, it cannot be said that this falls under a case where the Appellant has actually, continuously, and exclusively used the trademark in the Application consisting of only the color of "orange (Munsell value: 0.5YR5.6/11.2)" as a mark for distinguishing relevant products relating to the business of the Appellant from others without use of the trademark in the Application by others for a long time.

D Summary

When totally determining A to C described above, it cannot be acknowledged that the trademark in the Application meets the requirement of Article 3(2) of the Trademark Act.

6. Appellant's allegation

The Appellant alleges in Opinion 1, the written request, and Opinion 2 that "the trademark in the Application does not fall under the provision of Article 3(1)(iii) of the Trademark Act. Even if the trademark in the Application falls under the same article, the trademark in the Application came to be widely recognized by traders and consumers as a result of longtime use by the Appellant. Therefore, the trademark in

the Application falls under Article 3(2) of the Trademark Act. Furthermore, the present application meets the requirement of Article 5(5) of the Trademark Act. Accordingly, the reasons for refusal stated in the examiner's decision are not applicable".

Even if the present application came to meet the requirement of Article 5(5) of the Trademark Act as described in 5(1) above, the trademark in the Application falls under the provision of Article 3(1)(iii) of the Trademark Act as described in 5(2) above, and it cannot be acknowledged that the trademark in the Application has the function for distinguishing relevant products from others through use of the trademark in the Application as described in 5(3) above. Therefore, because the trademark in the Application does not meet the requirement of Article 3(2) of the Trademark Act, the allegation of the Appellant cannot be accepted.

In addition, rebuttal statements according to Opinion 1, the written request, and Opinion 2 by the Appellant are as the determination in 5(C), and there are no circumstances in which the rebuttal statements should be accepted.

7. Summary

As described above, even if the present application meets the requirement of Article 5(5) of the Trademark Act, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and does not meet the requirement of Article 3(2) of the Trademark Act. Therefore, the trademark in the Application cannot be registered.

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

Attachment 1 The trademark in the Application

(1) Trademark for Which Registration Is Sought (See original for colors)



(2) Detailed Description of Trademark (at the time of filing application)

The trademark for which registration is sought consists of only Taxi Yellow (Munsell value: 0.5YR5.6/11.2).

(3) Detailed Description of Trademark (amended)

The trademark for which registration is sought consists of only orange (Munsell value: 0.5YR5.6/11.2).

Attachment 2 (fact that a color similar to the color [orange] of the trademark in the Application is usually used for products of various construction machines in the industry handling construction machines including the designated goods of the trademark in the Application)

1 There is the fact such that, on the website of Sumitomo Heavy Industries, Ltd., under the title of "oil hydraulic shovels", the color that is the same type as orange that is the color of the trademark in the Application is used for the product "oil hydraulic shovels" in the field of "SH200HB" in the item of "features".

(<http://www.shi.co.jp/products/construct/shovel/>)



2 There is the fact such that, on the website of KUBOTA Corporation, under the title of "Kubota Construction Machinery", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "wheel loader" in the field of "snow remover" in "option" in the item of "Products wheel loader".

(http://www.kenki.kubota.co.jp/product/wheel_1)



3 There is the fact such that, on the website of used heavy machinery and construction machine information site Juki box, under the title of "mini shovels", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "mini shovels" (manufacturer: IHI) under the description of "price: 600,000 yen (consumption tax included)".

(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=1015)



4 There is the fact such that, on the website of used heavy machinery and construction machine information site Juki box, under the title of "1995 KOBELCO rough terrain crane RK160-2", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "rough terrain crane" (manufacturer: KOBELCO CONSTRUCTION MACHINERY CO., LTD.) under the description of "price: ASK".

(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=1069)



5 There is the fact such that, on the website of used heavy machinery and construction machine information site Juki box, under the title of "Isuzu JUSTON 90,000 km vehicle for high lift work TADANO AT-240CG", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "vehicle for high lift work" under the description of "price: ASK".

(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=1008)



6 There is the fact such that, on the website of Ahern Japan, under the title of "product information", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "mast-type vehicle for high lift work" in the field of "mast-type vehicle for high lift work TM12" in the item of "self-propelled scissor lifts".

(<https://www.snorkeljp.com/products/scissors/tm12.html>)



7 There is the fact such that, on the website of "TOYOTA L&F", under the title of "product information shovel loader", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "shovel loader" in the field of "shovel loader".

(<http://www.toyota-lf.com/products/detail/shovel/index.html>)



8 There is the fact such that, on the website of used heavy machinery and construction machine information site Juki box, under the title of "1991 manufactured by TADANO TR160M-2 belonging to official approval 31/1 crane with papers", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "rough terrain crane" under the description of "price: 44,280,000 yen (consumption tax included)".

(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=988)



9 There is the face such that, on the website of used heavy machinery and construction machine information site Juki box, under the title of "2017 TOYOTA GENEIO 2.5 t diesel automatic", a color that is the same type as orange that is the color of the trademark in the Application is used for the product "forklift" under the description of "price: 3,348,000 yen (consumption tax included)".

(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=946)



September 19, 2019

Chief administrative judge: KIMURA, Kazuhiro
Administrative judge: TOYODA, Junichi
Administrative judge: SETO, Toshiaki