

Appeal decision

Appeal No. 2017-9885

Osaka, Japan
Appellant

NEXTSTAGE CO., LTD.

Osaka, Japan
Patent Attorney

YAMAMOTO, Hideo

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2016-70844 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 June 30, 2016 by setting Class No. 9 "Cases for smartphones" as the designated goods.

2 Cited Trademark

The trademark with Trademark Registration No. 5713399 (referred to as "Cited Trademark" below) cited in the reasons for refusal in the examiner's decision because the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act is configured as indicated in the Attachment 2, and the application for its registration was filed on April 7, 2014 with designated goods of Class No. 9 which are as specified in the Trademark Registry (Attachment 3). The Cited Trademark was registered on October 24, 2014, and it is still valid as of now.

3 Judgment by the body

(1) The trademark in the Application

The trademark in the Application is a figure trademark in which a gray horizontally-long-and-thick line having two white lines therein is arranged between two gray vertically-long-and-thick lines of which upper ends and lower ends are projected outwards and is inserted into or overlapped with the centers of the vertically-long-and-thick lines to form the shape of H as indicated in the Attachment 1. It is reasonable to say that the figure gives rise to no specific pronunciation and no specific meaning.

(2) The Cited Trademark

As indicated in the Attachment 2, the Cited Trademark is a figure trademark in which a black horizontally-long-and-thick line is arranged between two black vertically-long-and-thick lines of which upper ends and lower ends are projected outwards and is inserted into or overlapped with the centers of the vertically-long-and-thick lines to form the shape of H. It is reasonable to say that the figure gives rise to no specific pronunciation and no specific meaning.

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

When the trademark in the Application is compared with the Cited Trademark, features of the configurations of appearance of both trademarks coincide with each other in that the horizontally-long-and-thick line is arranged between the two vertically-long-and-thick lines of which the upper ends and the lower ends are projected outwards and is inserted into or overlapped with the centers of the vertically-long-and-thick lines to form the shape of H and that the overall configuration gives an impression of a horizontally-long Alphabetic character of H, and outlines of figures of both trademarks are resembled. Furthermore, a difference between the trademarks is the colors of thick lines (gray and black) and whether or not the two white lines are arranged in the horizontally-long-and-thick line. Then, regarding the difference, in consideration of that gray and black are achromatic colors and there is no significant difference between two colors, and in addition, the trademark in the Application has a simple configuration in which the two white lines are illustrated in the horizontally-long-and-thick line in parallel, it cannot be said that these differences give a strong impression as a difference in the appearance relative to traders and consumers. Therefore, in a case where the trademark in the Application and the Cited Trademark are separately observed, it is reasonable to say that the appearances of both trademarks may be confused with each other.

The designated goods of the trademark in the Application are the same or similar to the designated goods of the Cited Trademark.

(4) Summary

According to the above, the trademark in the Application and the 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 the Cited Trademark.

Therefore, the trademark in the Application falls under Article 4(1)(xi) of the Trademark Act

(5) Appellant's allegation

A The appellant insists that it cannot be said that the appearances of both trademarks are similar to each other so as to be confused with each other because the two grooves provided in the trademark in the Application are clearly expressed with the thickness almost the same as the colored parts on both of upper and lower sides (horizontal lines extending in parallel) in the center part which most strongly attracts attention in the configuration of the trademark in the Application and give a visually strong impression, and the configuration of the trademark in the Application is significantly different from the configuration of the Cited Trademark.

However, as described in (3) above, the features of the configurations of the trademark in the Application and the Cited Trademark coincide with each other in that the horizontally-long-and-thick line is arranged between the two vertically-long-and-thick lines of which the upper ends and the lower ends are projected outwards and is inserted into or overlapped with the centers of the vertically-long-and-thick lines to form the shape of H and that the overall configuration gives an impression of a horizontally-long Alphabetic character of "H", and the outlines of the figures are resembled with each other. On the other hand, the two white lines in the configuration of the trademark in the Application which is insisted by the appellant has the simple configuration in which the two white lines are expressed in the horizontally-long-and-thick line in parallel. Therefore, it cannot be said that the white lines give a strong impression as the difference in the appearance, and it should be said that the

appearances of both trademarks may be confused with each other.

B The appellant insists that the Cited Trademark has a shape which is naturally associated with the Alphabetic character of "H", whereas it cannot be said that the trademark in the application has the shape which is naturally associated with the Alphabetic character of "H" because the center part of the trademark in the Application can be seen as "日" in kanji and is not recognized as a simple horizontal line, and it is hard to say that the pronunciation of "H (eichi, etti)" and the meaning of the "Alphabetic character of "H"" resulting from the Cited Trademark can be naturally given rise to from the trademark in the Application.

However, even when the Cited Trademark has the configuration described in (2) above and overall configuration of the Cited Trademark gives an impression of the horizontally-long Alphabetic character "H", the horizontally-long-and-thick lines of both trademarks are illustrated as components which are inserted into or overlapped with the center parts of the vertically-long-and-thick line to be separated from each other and have a shape which is too long in the horizontal direction to recognize the shape as a character. Therefore, it cannot be said that consumers coming into contact with the Cited Trademark necessarily recognize the Cited Trademark as the Alphabetic character "H", and it is reasonable to say that the Cited Trademark is recognized as a kind of a geometric figure. Accordingly, it should be said that the pronunciation and the meaning are not resulted from the Cited Trademark.

The trademark in the Application has the configuration described in (1) above. Furthermore, the feature of the configuration of the trademark in the Application coincides with that of the Cited Trademark as indicated in (3) above, and the outlines of the figures are resembled with each other. In addition, in the trademark in the Application, the two white lines are provided in the horizontally-long-and-thick line in parallel. Therefore, it is reasonable to say that the consumers coming into contact with this recognize the trademark in the Application as a kind of a geometric figure. Accordingly, it should be said that the pronunciation and the meaning are not resulted from the trademark in the Application.

Therefore, it is reasonable to say that the trademark in the Application and the Cited Trademark cannot be distinguished from each other based on the pronunciation and the meaning.

C The appellant insists that main consumer groups of the designated goods of the trademark in the Application are groups of students, members of society, and housewives whose smartphone use rate is high and whose distinguishing ability is relatively high. From this point, the appellant insists that it is hard to consider that the sources of the two trademarks are confused with each other.

However, no evidence supporting the allegation of the appellant is submitted, and it should be said that this is the appellant's unique opinion.

D Therefore, the appellant's allegations cannot be accepted.

(6) Summary

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

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

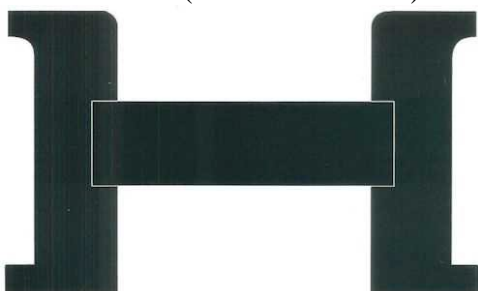
October 11, 2017

Chief administrative judge: TANAKA, Koichi
Administrative judge: OMORI, Tomoko
Administrative judge: TOMISAWA, Takeshi

Attachment 1 (The trademark in the Application)



Attachment 2 (Cited Trademark)



Attachment 3 (The designated goods by the Cited Trademark)

Class No. 9 "Nautical apparatus and instruments; surveying apparatus and instruments; optical apparatus and instruments; weighing apparatus and instruments; measuring apparatus and instruments; monitoring apparatus, electric; audiovisual teaching apparatus; apparatus and instruments for recording, transmission or reproduction of sound, data and images; magnetic data carriers and recording discs; pocket calculators; data processing apparatus; spectacles [optics]; sunglasses; goggles for sports; lenses; correcting lenses [optics]; contact lenses; containers for contact lenses; optical goods; spectacle frames; spectacle cases; binoculars; binoculars cases; telescopes; protective helmets for sports; riding helmets; temperature indicators; thermometers, not for medical purposes; tape measures; rulers [measuring instruments]; compasses [measuring instruments]; directional compasses, magnifying glasses [optics]; telemeters; height measuring machines; photographic and cinematographic apparatus and instruments; camcorders; stands for photographic apparatus; bags and cases for photographic apparatus; bags and cases for video cameras; computers; notebook computers; tablet computers; computer keyboards; computer peripheral devices; computer hardware; mouse [computer peripheral]; mouse pads; wrist rests for use with computers; personal digital assistants; electronic agendas; digital notepads; USB flash drives; USB memories; downloadable computer game programs; computer software; computer programs [downloadable software]; MP3 players, digital audio players; compact disc players and DVD players; personal stereos; portable media players; radios; television apparatus; video screens; video recorders; electronic telecommunications apparatus; navigational instruments; Global Positioning System [GPS] apparatus; telephone apparatus; cell phones; cell phone accessories; cell phone straps; cases for cell phones and tablet computers; protection covers for cell phones and tablet computers; cases for cell phones and tablet computers made of cloth or textile materials; cases for cell phones and tablet computers made of leather or imitations of leather; cases adapted for MP3 players, bags for MP3 players; bags and cases for

compact disc players; bags and cases for DVD players; headphones; stereo headphones; in-ear headphones; telephone receivers; headsets; wireless headsets; earphones; hands-free kits for telephones; code winders for headphones; loudspeakers; optical lenses; cases for optical lenses; appliances for measuring the thickness of leather; measuring spoons; scales; pedometers; dictating machines."