

Advisory opinion

Advisory opinion No. 2017-600038

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The case of the advisory opinion on the scope of Trademark Registration No. 5869106 between the parties above is stated and concluded as follows.

Conclusion

A mark A used for the product "mattress" belongs to the scope of the effects of the trademark right of the Trademark Registration No. 5869106.

Reason

No. 1 The Trademark

The trademark with Trademark Registration No. 5869106 (hereinafter referred to as "the Trademark") consists of Alphabetic characters of "GRANREVE", and the application for its registration was filed on September 11, 2015. The Trademark was registered on July 29, 2016, with setting Class No. 20 "Furniture; mattress." as the designated goods, and it is still valid as of now.

No. 2 The mark A

The mark used by the demandee for the product "mattress" (hereinafter referred to as "the mark A") is configured as indicated in the Attachment.

No. 3 The demandant's allegation

The demandant requested a decision whose content is the same as the conclusion, summarized and mentioned reasons for request as follows, and submitted Evidence A No. 1 to A No. 10 (including their branch numbers) as means of evidence.

1 Statement of the demand

(1) Since the Trademark consists of the Alphabetic characters of "GRANREVE"

horizontally written in the same font and same size in series, the Trademark gives rise to the pronunciation of "guranrive".

On the other hand, from Alphabetic characters of "GRAN Riva" and a katakana part of "グランリーヴァ (guranriva)", the mark A gives rise to the pronunciation of "guranriva".

In addition, regarding the Alphabetic characters of the Trademark and "GRAN Riva" of the mark A are common in first to fifth characters of all the eight characters, and are common in six characters in the entire configurations.

Therefore, the Trademark and the mark A are similar marks and have a confusing pronunciation and appearance.

The "mattress" in Class No. 20 of the designated goods of the Trademark is the same as the product "mattress" for which the mark A is used.

(2) Need for advisory opinion request

The demandant is the holder of trademark right of the Trademark and issued a notice to the demandee on December 16, 2016 that the use of the mark A for the product "mattress" by the demandee violates the trademark right of the Trademark (Evidence A No. 2).

In response to this, the demandee responded that the Trademark is not similar to the mark A used by the demandee and the mark A does not violate the trademark right of the Trademark (Evidence A No. 3).

Therefore, to solve this problem, the demandant requests the decision regarding the scope of the effects of the trademark right of the Trademark.

(3) Description of the mark A

As a result of image search by using the Alphabetic characters of "granz gran riva" as a retrieval keyword with the search engine Google on the Internet (January 1, 2016 to August 21, 2016, Evidence A No. 4), a product which appears at the center of the top line is the product of the demandee (Evidence A No. 1-4). Therefore, it is obvious that the demandee has used the mark deemed identical with the mark A from generally accepted perspective for the product "mattress" since around August 21, 2016 at the latest.

Furthermore, Evidence A No. 1-1 is a leaflet which introduces the domestic mattress of the demandee on which the mark A is displayed. Since the company name of the demandee (Alphabetic character. Granz Co., Ltd.) is written at the center of the lower part, it is estimated and assumed that the demandee uses the leaflet for sales of the demandee's product.

Evidence A No. 1-1 was obtained by an employee of the demandant around December 2016.

On the other hand, the mattress which is the product of the demandant for which the Trademark is used is sold in shops of the home center "NAFCO" managed by NAFCO Corporation. (Kitakyusyu-shi, Fukuoka, Evidence A No. 5), which form a business alliance with the demandant, since around November 2014 (Evidence A No. 6 to No. 9).

(4) Description explaining that the mark A belongs to the scope of the effects of the trademark right

The Trademark consists of the Alphabetic characters of "GRANREVE" horizontally written in the same font and same size in series and gives rise to the pronunciation of "guranrive".

Furthermore, since the Trademark is a coined word created by the demandant, the Trademark does not have a specific concept.

On the other hand, the mark A consists of the Alphabetic characters of "GRAN Riva" and katakana of "グランリーヴァ (guranriva)" horizontally written in a single line, and both of the Alphabetic character part of "GRAN Riva" and the katakana part of "グランリーヴァ (guranriva)" give rise to the pronunciation of "guranriva". The mark A does not have a specific concept.

As a result of examination regarding the similarity between the Trademark and the mark A, the pronunciation of "guranrive" resulting from the Trademark and the pronunciation of "guranriva" resulting from the mark A are common in the sound from the beginning to the fifth sound in the six sounds of the entire configuration which is redundant. A difference between the Trademark and the mark A in the pronunciation is only one sound of "ve" and "va" at the end of the words.

The different sounds "ve" and "va" are combined sounds of a consonant [v] which is a vocal labio-dental fricative with vowels "a" and "e" which are approximation sounds, and intonations of both sounds are similar to each other.

Therefore, an effect of the above sound difference on both of the entire pronunciations is small, and it is obvious that the Trademark and the mark A are confused with each other in the pronunciation because the intonations and the sounds of the marks are approximated to each other when the Trademark and the mark A are pronounced in series.

Furthermore, regarding the appearance, although the mark A consists of the Alphabetic characters of "GRAN Riva" and katakana of "グランリーヴァ (guranriva)", the katakana part can be perceived as simply displaying the read sounds of the Alphabetic characters. Therefore, the Alphabetic character part alone functions as a mark for distinguishing relevant products from others.

In this case, each of the Trademark and "GRAN Riva" of the mark A includes eight Alphabetic characters, and a difference between the Trademark and "GRAN Riva" of the mark A is the sixth and the final characters. However, in comparison with that the Trademark and the mark A are common in the characters from the beginning to the fifth character, an effect of the above difference on the similarity determination is considerably small.

Furthermore, the Trademark is written in all capitals. Whereas, characters from the sixth to the final characters of "GRAN Riva" of the mark A are written in lower cases. The Trademark and the mark A are different from each other in this point.

However, when a trademark including Alphabetic characters is displayed, capitals and low cases are alternatively written in the market in general, and there is no doubt that these trademarks are identical with each other from generally accepted perspective. That is, in the trademark including Alphabetic characters, an effect of the difference between capitals and low cases on the similarity determination is considerably small. Therefore, the Trademark and the mark A have a confusing appearance.

Finally, regarding the concept, since both of the Trademark and the mark A do not have a specific concept, both trademarks cannot be compared with each other.

As described above, the Trademark and the mark A have a confusing pronunciation and appearance and are similar to each other.

Furthermore, since the designated goods of the Trademark and the product for

which the mark A is used are "mattress", both goods are the same as or similar to each other.

2 Summary

Accordingly, the mark A is similar to the Trademark, and the product for which the mark A is used and the designated goods of the Trademark are "mattress" and are the same as or similar to each other. Therefore, the mark A used by the demandee for the product "mattress" belongs to the scope of the effects of the trademark right of the Trademark.

No. 4 The demandee's allegation

The demandee requested a decision that the mark A does not belong to the scope of the effects of the trademark right of the Trademark, summarized and mentioned reasons for request as follows, and submitted Evidence B No. 1 to A No. 23 as means of evidence

1 Regarding the Trademark

(1) The Trademark consists of the Alphabetic characters of "GRANREVE", and Alphabetic characters of "REVE" form a French word which means "dream" and is pronounced as "reebu". Therefore, the Trademark gives rise to the natural pronunciation of "guranreebu" (Evidence B No. 1 and No. 2).

Furthermore, as described later, in a case where the Trademark is read in Roman letters or in English, it cannot be said that the Trademark gives rise to the pronunciation of "guranrive".

The demandant described "REVE" is a word which means "dream" (Evidence A No. 6), and recognizes "REVE" as a word which is pronounced as "reebu". In addition, no evidence is submitted indicating that the Trademark gives rise to the pronunciation of "guranrive"

When the Trademark is read in Roman letters, the pronunciation is "guranrebe". When the Trademark is read in English, the pronunciation is "guranrebu" or "guranreebu".

In a case of reading in English, regarding a part of "RE", it is natural that "re" in the middle is read as "re" as pronouncing "break" as "bureiku" and "fresh" as "fuessyu" and "VE" at the end of the word is read as "bu" as pronouncing "drive" as "doraibu" and "naïve" as "naiibu".

Therefore, in a case of reading in English, the part of "REVE" gives rise to the pronunciation of "rebu" or "reebu", it cannot be said that the Trademark gives rise to the pronunciation of "rive" when the Trademark is read in Roman letters or in English (Evidence B No. 3 to No. 12).

In such a circumstance, when a consumer comes into contact with the Trademark, it is natural that the consumer pronounces the Trademark as "guranreebu" or "guranrebu", and it is not natural that the Trademark gives rise to the pronunciation of "guranrive" (Evidence B No. 13 to No. 17).

(2) As described above, the Trademark gives rise to the natural pronunciation of "guranrebu" or "guranreebu" and does not give rise to the pronunciation of "guranrive".

2 Regarding the mark A

The mark A consists of characters of "GRAN Riva" and "グランリーヴァ (guranriva)" written in the single line. Since the mark A includes five sounds in total and is not redundant, the entire mark is recognized as a series of trademark and gives

rise to the natural pronunciation of "guranriva".

3 Similarity determination between the Trademark and the mark A

(1) The pronunciation of "guranreebu" resulting from the Trademark is different from the pronunciation of "guranriva" resulting from the mark A in two sounds of five sounds. It is obvious that the pronunciation of the Trademark and the pronunciation of the mark A are not wrongly listened.

Furthermore, even if the Trademark gives rise to the pronunciation of "guranrive", each of the Trademark and the mark A is short and includes five sounds, dullnesses of "ve" and "va" are clearly pronounced, and both sounds of the ends of the words can be sufficiently distinguished from each other and listened.

Regarding the appearance, the Trademark is written in all capitals, and the sizes of the characters are uniformed. On the other hand, in the mark A, "GRAN" and only "R" of "Riva" are written in capitals. The character of "G" at the beginning of the word is slightly larger, and other characters are slightly smaller. In addition, katakana of "グランリーヴァ (guranriva)" is also written in the mark A, and the appearance of the mark A is obviously different from the appearance of the Trademark.

Regarding the concept, since both of the Trademark and the mark A are coined words, the Trademark and the mark A cannot be compared with each other.

As described above, in a case where the Trademark is compared with the mark A, both trademarks are not similar to each other in the pronunciation, the appearance, and the concept. It should be said that the Trademark and the mark A are not similar to each other as a whole.

(2) The characters of "GRAN" included in the Trademark and the mark A evoke "grand" which means "large, large size" and the like in English and French.

Furthermore, "グラン (gran)" means "grand" (Evidence B No. 18), and Alphabetic characters of "GRAN" included in the Trademark and the mark A are recognized as a word indicating a content of the product and the like.

On the other hand, the Alphabetic characters of "REVE" mean "dream" in French, and the Alphabetic characters of "Riva" mean "shore" in Italian (Evidence B No. 19). However, since awareness of French and Italian is low in Japan, "REVE" does not evoke these meanings.

That is, it cannot be denied that the Alphabetic character part of "GRAN" of the Trademark and the mark A is omitted and the Alphabetic character parts of "REVE" and "Riva" give rise to the pronunciations.

Even if only the Alphabetic character parts of "REVE" and "Riva" are pronounced, the pronunciation of "leebu" and "riba" including only two sounds can be obviously distinguished from each other and listened. Furthermore, even if the Alphabetic characters of "REVE" are pronounced as "rive", it is obvious that "REVE" is unlikely to be wrongly listened as "reeba" resulting from the Alphabetic characters of "Riva" in a considerably short configuration including two sounds.

(3) As described above, the Trademark and the mark A are not similar to each other as a whole. Furthermore, if a part of the mark gives rise to the pronunciation, both trademarks are not similar to each other.

4 Regarding usage condition of the mark A

The demandee is a furniture wholesaler which was established in 1983, and main product lines are beds and mattresses for beds.

The demandee has used the trademarks of "GRAN" series named from the

company name since around December 2012 to the present time, and annual total sales of the mattress from 2015 to 2017 is equal to or more than four thousands per year (Evidence B No. 20).

The trademark of "GRAN" series used by the demandee is used in a mode which can be easily recognized as the "GRAN" series by the consumer by providing a space between the Alphabetic characters of "GRAN" and other characters or making the characters be different from each other by writing the characters in capitals and lower cases (Evidence B No. 21 to No. 23).

In such a usage condition, in a case where the consumer comes into contact with the mark A, the mark A is recognized as a name of one product of the "GRAN" series provided by the demandee, and it is obvious that the mark A is not confused with the Trademark which is recognized as a series of a trademark as a whole.

5 Summary

As described above, the mark A is not similar to the Trademark, and it is obvious that the mark A does not belong to the scope of the effects of the trademark right of the Trademark.

No. 5 Judgment by the body

1 Regarding the Trademark

The Trademark consists of the Alphabetic characters of "GRANREVE" as described in No.1 above, and the Alphabetic characters are not recorded in general dictionaries of foreign languages. Therefore, the Alphabetic characters are recognized as a kind of coined word which does not evoke a specific meaning and does not have a specific concept.

Then, regarding the Alphabetic character part of "REVE" in the configuration of the Trademark, for example, an English word "revenge" having a meaning of "revenge and vengeance" is pronounced as "rivengi" and an English word "reverse" having a meaning of "go back on and change" is pronounced as "rivasu". Accordingly, the Trademark gives rise to the pronunciation of "guranribu" in English way. Furthermore, the demandant applies indicating how to read of "グランリーヴェ (guranrive)" when using the Trademark for "mattress" included in the designated goods thereof (Evidence A No. 6). Therefore, it is acknowledged that the Trademark basically gives rise to the pronunciation of "guranrive".

2 Regarding the mark A

The mark A consists of the Alphabetic characters and katakana of "GRAN Riva グランリーヴァ (guranriva)" (Alphabetic character G is expressed to be slightly larger than the other characters, the same applies hereinafter).

The mark A gives rise to the pronunciation of "guranriva" from the Alphabetic character part of "GRAN Riva" and the katakana part of "グランリーヴァ (guranriva)" which is easily understood as indicating how to read "GRAN Riva", and the Alphabetic characters and katakana are not recorded in general dictionaries of foreign languages and Japanese. Therefore, it can be said that the each part may independently perform the function for distinguishing relevant products from others and is recognized as a kind of a coined word which does not evoke a specific meaning, and does not have a specific concept.

3 Similarity between the Trademark and the mark A

The Trademark consists of the Alphabetic characters of "GRANREVE", and the

mark A consists of the Alphabetic characters and karakana of "GRAN Riva グランリーヴァ (guranriva)". Therefore, it can be said that the entire configurations of the marks are not confused with each other according to whether the katakana part is included. However, both of the Trademark and the Alphabetic character part of "GRAN Riva" which is the primary part of the mark A have the same characters from the beginning of the word to the fifth character and the seventh character. The marks are different from each other only in the sixth characters ("E" and "i") and the eighth characters ("E" and "a"). Therefore, it is acknowledged that the both trademarks give a resemblant impression to observers apparently.

The pronunciation of "guranribu" or "guranrive" resulting from the Trademark and the pronunciation of "guranriva" resulting from the mark A commonly have the sound of "guranri" at the beginning of the word which is important for distinguishing the pronunciation. The difference between the two trademarks is a difference between the sound of "vu" and "ve" and the sound of "va" at the end of the word which is comparatively hard to listen, and this difference is only a difference between vowels "u" and "e" and "a". Therefore, it should be said that when the Trademark and the mark A are pronounced, the intonations and sounds are approximated with each other, and accordingly, the Trademark and the mark A may be confused with each other.

Since the Trademark and the mark A do not have a specific concept, concept of both trademarks cannot be compared with each other.

Then, in a case where the Trademark and the mark A are separately observed, even if the concept cannot be compared with each other, it is acknowledged that both trademarks are similar to each other of which the appearances are approximated with each other and the pronunciations may be confused with each other.

4 The demandee's allegation

(1) The demandee insists that "in the mark A, "GRAN" and only the character "R" of "Riva" are written in capitals, and the character "G" at the beginning of the word is written to be slightly larger, and other characters are written to be slightly smaller...the appearance of the mark A is obviously different from that of the Trademark".

However, even if the character "G" at the beginning of the word is written to be slightly larger, the Alphabetic character part of the mark A is only recognized as a part in which two character parts of "GRAN" and "Riva" are written in a normally-used mode.

Then, regardless of the expression of the character "G" at the beginning of the word and a small space provided between the character parts of "GRAN" and "Riva", these differences are very minor differences. It cannot be said that the differences affect the comparison between the Trademark and the Alphabetic character part of the mark A.

(2) The demandee insists that "the Trademark gives rise to the natural pronunciation of "guranrebu" or "guranleebu".

However, even though the Trademark may give rise to the above pronunciation, as described in 1, it is acknowledged that the Trademark basically gives rise to the pronunciation of "guranrive". Therefore, it should be said that the pronunciation resulting from the Trademark is similar to the pronunciation resulting from the mark A.

5 Regarding designated goods of the Trademark and products for which the mark A is used

Evidence A No. 1-1 is a leaflet of "domestic mattress product line" sold by the

holder of the trademark right (Granz Co., Ltd), eight kinds of products "mattress" under four product names are listed. From among the above products, two kinds of product "mattress" (premium hard and classic hard) of which the "product name" is the mark A are listed together with photographs.

Then, it is acknowledged that the mark A is used for the product "mattress", and the product "mattress" is the same as the "mattress" of the designated goods of the Trademark.

6 Summary

As described above, the Trademark and the mark A are similar to each other of which the appearances are approximated with each other and the pronunciations may be confused with each other, and the product "mattress" for which the mark A is used is the same as the "mattress" of the designated goods of the Trademark.

Therefore, the mark A used for the product "mattress" belongs to the scope of the effects of the trademark right of the Trademark.

Therefore, the advisory opinion shall be made as described in the conclusion.

March 7, 2018

Chief administrative judge: HAYAKAWA, Fumihiro

Administrative judge: TANAKA, Kyoko

Administrative judge: TAMURA, Masaaki

Attachment (the mark A, refer to Evidence A No. 1-1 for more details)

