

Appeal decision

Appeal No. 2018-4789

Appellant

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Patent Attorney

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The case of appeal against the examiner's decision of refusal of Trademark Application No. 2015-55105 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 consists of the configuration as indicated in Attachment 1, and the application for its registration was filed as a Three-Dimensional Trademark on June 10, 2015 with designated goods of Class 20 "Furniture."

2 Reasons for refusal stated in the examiner's decision (gist)

(1) The trademark in the Application is a Three-Dimensional Trademark consisting of the configuration as indicated in Attachment 1 and consists of a three-dimensional shape from which furniture can be easily recognized in relation with its designated goods. The three-dimensional shape only displays one form of a product that achieves a function or creates an aesthetic impression of the furniture, and is within a range that may be generally adopted by the same type of products.

Then, even if the trademark in the Application is used for its designated goods, traders and consumers understand that the trademark in the Application only simply displays one form of the product.

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

(2) Regarding distinctiveness the trademark in the Application acquired through use, based on the evidences submitted by the Applicant, it cannot be acknowledged that the trademark in the Application is a trademark by which consumers are able to recognize the goods as being connected to a certain person's business as a result of the use of the

trademark for the designated goods by the Appellant.

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

3 Examination of evidence by the body

As a result of ex officio examination of evidence by the body regarding whether or not the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, there are found cases where a top of a table is configured by combining sides having unequal lengths (Attachment 2), cases where tripod plates formed by combining plates are arranged below the top of the table, and cases where a housing space is provided as using the tripod plates (Attachment 3). Therefore, the result was notified to the Appellant 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 (notice of examination of evidence dated on June 24, 2019), and the Appellant's opinion was asked.

4 Gist of Appellant's opinion with respect to the examination of evidence

(1) In the cases indicated in Attachments 2 and 3, the table having features of the trademark in the Application (asymmetric shape of top, three tripod plates, holes in tripod plate, shape of concave pentagon of ground plate, and transparent intermediate plate) does not exist. Even in consideration of these cases, the trademark in the Application does not have a shape that is obviously recognized as a table and has an extremely unique shape that exceeds a range that may be predicted as a shape of a table.

(2) The dining table manufactured and sold by the Appellant has been continuously sold in Japan and has been picked up in websites, magazines, or the like. Accordingly, the extremely unique shape of the dining table came to be recognized by traders and consumers.

5 Judgment by the body

(1) Distinctiveness of shape and figure of the trademark in the Application

A As indicated in Attachment 1, the trademark in the Application is a three-dimensional trademark in which (A) a top (wood-grain) including four sides having unequal lengths is arranged and (B) three plates stand as leg portions below the top (two large holes are provided through side surfaces of two plates), a glass-like horizontal plate (transparent) is arranged between the tripod plates, and a bottom plate having five corners is arranged along the position of the tripod plate and below the tripod plates (both are wood-grain). In the entire configuration, the top consisting of the unequal sides attracts

attention, and the entire configuration gives an impression as a table that has an awkward top shape and provides the housing space in the leg portion.

B In recent years, as the shape of the top of the table, various shapes (triangle, square, pentagon, rounded shape) have been adopted. As indicated in Attachment 2, a shape that gives an impression of a distorted shape or a deformed shape by using sides having unequal lengths is generally adopted as a design method.

Furthermore, as indicated in Attachment 3, to arrange the tripod plates formed by combining the plates in the leg portion of the table and to provide the housing space by providing the horizontal plate or the like while using the tripod plates constitute a design method that is normally adopted in trade relation even though the shapes and the configurations vary between products.

Moreover, it is obvious that to use a wood-grain material or a glass material as the material of the table depending on design and functions is a method that is adopted quite generally in trade relations.

C It should be said that, in consideration of the actual trade condition in B described above, the features of the trademark in the Application in A described above are within a range of the design method that is generally adopted and employed in the shape of the same type of the product in order to achieve the functions or the aesthetic impression, and even the entire configuration obtained by combining these features does not give an impression such that the configuration is created by being inspired by a specific object. It cannot be said that, the trademark in the Application has a novel feature that cannot be predicted by consumers, particularly in the current situation in which tables having various shapes and features are widely distributed.

Then, it should be said that all the features of the shape of the trademark in the Application are the shape adopted in order to simply achieve the aesthetic impression or the function or within a range that can be predicted as the shape selected for the purpose thereof. Therefore, it should be said that the trademark in the Application is recognized and understood by consumers and traders related to the designated goods as a mark that simply displays the shape of the product by a normally used method.

D The Appellant alleges that the trademark in the Application does not have the shape that can be obviously recognized as a table, because no other table that has the features of the trademark in the Application (asymmetric shape of top, three tripod plates, hole in tripod plate, shape of ground plate, and transparent intermediate plate) exists, and the trademark in the Application has an extremely unique shape that exceeds the range that may be predicted as a shape of a table.

However, the trademark in the Application can be easily understood as the table

that has an awkward top shape and is provided with the housing space in the leg portion as described in A as a whole from the existence of the top and the leg portion, and there is an actual trade condition in which tables that have the feature common to the trademark in the Application and have various shapes and features are widely distributed as described in B. In consideration of this, it cannot be said that the trademark in the Application has a novel feature that cannot be predicted by consumers, and as described in C, it should be said that the shape of the trademark in the Application is a shape adopted in order to simply achieve the aesthetic impression or the function or within a range that cannot be predicted as the shape selected for the purpose thereof. Therefore, the Appellant's allegation cannot be accepted.

Note that, an irregular top shape related to the dining table of the Appellant that has the features of the shape of the trademark in the Application is described as a shape which achieves the aesthetic impression or the functions of the product, for example, "a shape that does not limit the number to persons to sit copes with various scenes and gives comfortable distance feeling by a slight difference in lines of sight", the leg portion is "inspired by a fireplace", the hole in the leg portion gives a "physically and visually light" impression, and the glass plate of the leg portion is brought from another shelf (Evidence A No. 71).

E In light of the above, because the trademark in the Application is a trademark consisting of only a mark that displays the shape of the product by the usually used method, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

(2) Distinctiveness of the trademark in the Application acquired through use

A Regarding use of the trademark in the Application by the Appellant

(A) A "M21" dining table (hereinafter, referred to as "Appellant's product") was manufactured by TECTA (TECTA), production started in 1990 and designed by a plurality of designers (Evidence A No. 71). According to the Appellant's allegation, Appellant's product has been sold through an agent (ACTUS CO., LTD.) since 1997 in Japan.

(B) Two types of the Appellant's products having different top sizes ("M21-1" and "M21") have the features of the shapes in common to the trademark in the Application (Evidence A No. 1).

(C) According to the Appellant's allegation, the sales result of the Appellant's product for ten years (2006 to 2015) was about 4,730, and the sales volume was about 2.8 billion yen based on estimation using list prices (between about 440,000 yen and about 740,000 yen).

(D) Regarding the Appellant's product, photographs with characters of "TECTA" or "M21" from which the entire or a part of the shape of the product can be confirmed have been posted in advertisements and leaflets together with other furniture or the like (Evidences A No. 64 to A No. 70, and A No. 72).

Furthermore, the Appellant's product with the characters of "TECTA" or "M21" has been similarly posted in websites of, for example, a furniture dealer, a used furniture dealer, blogs, or the like together with the photograph from which the entire or a part of the shape of the product can be confirmed (Evidences A No. 15 to A No. 63).

(E) The Appellant's product has been posted in magazines ("Pen", "MODERNLIVING", "I'm home", "SUMAI no SEKKEI", "Sumai", "Relife+", "ELLE DECOR", "HOUSING", "LORO", "北欧テイストで楽しむ100人の家づくり (hokuoteisuto de tanoshimu 100 nin no iezukuri; making home by 100 persons with Northern European atmosphere)", "北欧テイストの部屋づくり (hokuoteisuto no heyazukuri; room making with Northern European atmosphere)", "Letter", "都心に住む (toshin ni sumu; living in city)", or the like) and advertisements therein together with the photograph from which the entire or a part of the shape of the product can be confirmed (Evidences A No. 3 to A No. 14 and A No. 78 to A No. 87).

Some of these articles mention the shape of the Appellant's product; for example, "The top has a unique shape, and a user wants to change a place to sit such a long side, corners having different angles, or the like depending on a purpose of using the table" (Evidence A No. 5), "a large number of people can sit around an irregular top, and a slight difference in lines of sight reduces oppressive feeling" (Evidence A No. 78), "an indescribable style created by a top having an organic form and a unique leg portion" (Evidence A No. 79), "TECTA desk with the top having an organic shape offers free sitting positions" (Evidence A No. 80), and "A top has an organic form, and the number of people to sit is not limited. In addition, because the lines of sight of sitting persons do not meet, people do not feel a psychological oppressive feeling." (Evidence A No. 87). In many magazines, the above mentions and the introduction of the Appellant's product are not written, and the Appellant's product is only simply included in the interior of the house, a photograph introducing the house, or the like.

(F) The Appellant's product was exhibited in "TECTA BAR TOKYO" in 2017 and "BAUHAUS masterpiece exhibition" in 2018 (Evidences A No. 73 to A No. 75).

(G) The Appellant or the agent provided art coordination including the Appellant's product in television programs broadcasted in 2017 and 2019 (Evidences A No. 76, and A No. 88 to A No. 91). However, the submitted evidence cannot confirm the fact that the Appellant's product including the shape thereof was particularly advertised, in

addition to the use of the Appellant's product only as an art tool.

B Examination

As described in A, the Appellant's product that has the same shape deemed identical with the trademark in the Application from a generally accepted perspective has been sold in Japan for more than 20 years, and the product has been continuously introduced in advertisements, magazines, websites, and the like.

However, the sales volume of the Appellant's product is not necessarily obvious (the number of sold products alleged by Appellant is substantially fewer than 500 on simple annual average), and the scale, frequency, cost, and the like of the advertisements are not obvious. Therefore, it is difficult to grasp the business scale and the advertisement scale. Even when the Appellant's product is posted in magazines or the like, the magazines are not so-called general magazines and are mainly house information related magazines, and the posting frequency and the number of posting media are not necessarily high and large.

Furthermore, regarding the articles that introduce the Appellant's product in the magazines or the like, it is considered that the Appellant's product only simply being included in the interior of the house, a photograph introducing the house, and the like have an extremely poor advertisement effect. Even the article mentions the shape of the Appellant's product, the article explains and emphasizes the aesthetic impression or the functions (a large number of people can sit, lines of sights do not meet, or the like) regarding the features of the top shape (deformed, irregular, or the like) and the leg portion, together with the photograph of the Appellant's product. Therefore, it is not obvious whether or not these articles in the magazines particularly give an impression that the shape of the Appellant's product is a mark identifying the source related to the Appellant more than an impression that the shape of the Appellant's product is a shape of a product that simply has the aesthetic impression or the functions.

In addition, the events in which the Appellant's product has been exhibited were held only twice and once per year, and exhibition content does not focus on only the Appellant's product. Then, regarding the art coordination in the television programs or the like, if the Appellant's product was simply used only as an art tool in a drama, it is very difficult for a viewer of the program to associate the shape of the dining table appearing in the drama and the Appellant.

Then, it cannot be said that the shape of the Appellant's product has been widely known as a product manufactured and sold by the Appellant and has been well-known and prominent among general consumers related to the designated goods, and it cannot be said that the Appellant's product has acquired a function as a mark, for distinguishing

relevant products from others, relating to the business of the Appellant.

C The Appellant's allegation

The Appellant alleges that the extremely unique shape of the Appellant's product came to be recognized by traders and consumers through continuous use of the Appellant's product.

However, regarding the features of the top and the leg portions of the Appellant's product, as indicated in Attachment 2, a large number of tables that adopt the shape in which the sides having unequal lengths give a distorted or deformed impression are sold, and in addition, as indicated in Attachment 3, a large number of tables in which the housing space is provided in the leg portion of the table with ingenuity are sold. Therefore, it cannot be said that the features of the top and the leg portion of the Appellant's product are largely differentiated from products of other companies. Accordingly, it cannot be said that the Appellant's product has high originality. Then, as described in B, it cannot be said that the shape of the Appellant's product has been widely known to function as a mark, for distinguishing relevant products from others, relating to the business of the Appellant and has come to be well-known and prominent among general consumers. Therefore, the Appellant's allegation cannot be accepted.

D Summary

In light of the above, because it cannot be said that the trademark in the Application has acquired the function as a mark for distinguishing relevant products from others according to the use result by the Appellant, the trademark in the Application is not a trademark that enables consumers to recognize the goods as those pertaining to a business of a particular person and does not meet the requirement of Article 3(2) of the Trademark Act.

(3) Summary

As described above, because 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 same Act, the trademark in the Application cannot be registered.

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

November 28, 2019

Chief administrative judge: KIMURA, Kazuhiro

Administrative judge: ITAYA, Reiko

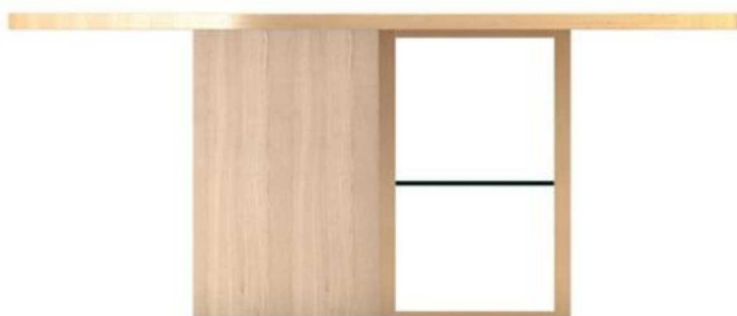
Administrative judge: ASO, Hiroki

Attachment 1 (the trademark in the Application. Refer to original color)

(1) FIGURE 1/7



(2) FIGURE 2/7



(3) FIGURE 3/7



(4) FIGURE 4/7



(5) FIGURE 5/7



(6) FIGURE 6/7



(7) FIGURE 7/7



Attachment 2 Cases where a top of a table is configured by combining sides having unequal lengths

(1) In the website of "Rigna", the following product photograph is posted in the paragraph of the introduction of the product "deformed dining table" together with description that "... this is a 'deformed dining table' surrounded by a large number of people when guests come over".

<https://www.rigna.com/item/6529>



(2) In the website of "キナル (kinaru)", the following product photograph is posted in the paragraph of the introduction of the product: "deformed dining table with housing SHUNO W180" together with description that "... not a circle, not a square, this is a design to be justly called 'modified'".

<https://www.kinaru.com/fs/sense/kr296>



(3) In the website of "ROOM+1", the following product photograph is posted in the paragraph of the introduction of the product "dining table" together with description that "The dining table has a distinctive top shape".

<http://www.roomplus1.com/products/dining/1050.html/>



(4) In the website of "ACTUS", the following product photograph is posted in the paragraph of the introduction of the product "KULAUM dining table" together with description that "This table has a mechanism for causing people to sit in a free manner and causing 'active conversation' by using a deformed triangular shape, not a conventional square or circular table".

<https://www.actus-interior.com/products/detail.php?idx=00000035>



(5) In the website of "ACTUS", the following product photograph is posted in the paragraph of the instruction of the product "KULAUM living table" together with description that "This table has a mechanism for causing people to sit in a free manner and causing 'active conversation' by using a deformed triangular shape, not a conventional square or circular table".

<https://www.actus-interior.com/products/detail.php?idx=00000004>



(6) In the website of "E-comfort for designer's furniture", the following product photograph is posted in the paragraph of the introduction of the product "NOGUCHI table" together with description that "The top made of tempered glass has a rice-ball-like shape, in which all the three round portions are different from each other, making an elaborate design".

https://www.e-comfort.info/p_ct3001.html



(7) In the website of "LIVING DESIGN TAKEDA", the following product photograph is posted in the paragraph of the introduction of the product "KARIMOKU FURNITURE".

BASIC living center table".

<https://ldt.co.jp/karimoku/living2/tu4653.html>



(8) In the website of "kirario online shop", the following product photograph is posted in the paragraph of the introduction of the product "living table ALBO".

<https://www.kirario.jp/SHOP/KRI3058.html>



(9) In the website of "家具工房クラポ" (kagukoubou kurapo; furniture studio crapo), the following product photograph is posted in the paragraph regarding the ordered case of "T-37 pentagonal ordered dining table".

http://www.crapo.jp/saikin/saikin128/saikin_128.htm



Attachment 3 Cases where tripod plates formed by combining plates are arranged below the top of a table and cases where a housing space is provide as using these tripod plates
 (1) In the website of "Hida Sangyo Co., Ltd.", the following product photograph is posted as a product example of "尽 (JIN)" (order system that can specify the top shape, the legs, or the like of the table).

https://kitutuki.co.jp/products/jin_dining-table



(2) In the website of "ASKUL", the following product photograph is posted in the paragraph of the introduction of the product "SEKI FURNITURE Co., Ltd. living table Rope L table (trapezoid)".

<https://www.askul.co.jp/p/P271649/>



(3) In the website of "margherita", the following product photograph is posted in the paragraph of the introduction of the product "Tavola dining table".

<https://www.margherita.jp/tavola/>



(4) In the website of "Rigna", the following product photograph is posted in the paragraph of the introduction of the product "PIANURA dining table" together with description that "Because shelf plates are provided below the top, notebook PCs, magazines, or the like can be housed".

<https://www.rigna.com/item/17923>



(5) In the website of "Rigna", the following product photograph is posted in the paragraph of the introduction of the product "low dining table".

<https://www.rigna.com/item/16473>



(6) In the website of "LOWYA", the following product photograph is posted in the paragraph of the introduction of the product "dining table set for four persons (five pieces)".

https://www.low-ya.com/category/DINING_SET/F703_G1294.html



(7) In the website of "LOWYA", the following product photograph is posted in the paragraph of the introduction of the product "center table with T-like shape and housing".
https://www.low-ya.com/category/TABLE_LIVING/F402_17003.html

