Appeal decision

Appeal No. 2018-8857

Aichi, Japan
Appellant MTG CO., LTD.

Patent Attorney Grandam Patent Law Firm

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2017-11930, entitled "EXERCISE TOOL" has resulted in the following appeal decision.

Conclusion

The examiner's decision is revoked.

The design in the application shall be registered.

Reason

No. 1 History of the procedures

June 2, 2017	Application for design registration
As of December 28, 2017	Notification of reasons for refusal
February 19, 2018	Submission of written opinion
As of March 22, 2018	Examiner's decision of refusal
June 27, 2018	Submission of written request for appeal

No. 2 The design in the application

In the design of the present application, according to descriptions of the application and drawings attached to the application, the article to the design is "an exercise tool," and the shape, patterns, or colors, or any combination thereof (hereinafter, “the shape, patterns, or colors, or any combination thereof” are referred to as "the form") is as described in the application and the drawings attached to the application. (Hereinafter, referred to as "the design in the application.") (See Appendix 1)

No. 3 Reasons for refusal stated in the examiner's decision and Cited Design

The reasons for refusal in the examiner's decision is that the design in the application falls under the category of Article 3(1)(iii) of the Design Act (a design that cannot be granted design registration because of its similarity to a prior, publicly known design), and the cited design in the reason for refusal (hereinafter referred to as "the cited design," and this design and the design in the application are collectively referred to as "the two designs") is the design of "PHYSICAL TRAINING EQUIPMENT" listed in

"Author's name	Xu Wang
Title	TB SERIES	TWISTER BAG
Listed Portion	Website "Hysun Marine"
Type of media	online
Listed Date	October 9, 2015

Retrieved Date Retrieved on December 25, 2017
Source of Information Internet
Address of Information http://hysunmarine.blogspot.jp/2015/10/tb-series-twister-bag.html"
(Appendix 2).

No. 4 Judgment by the body
1 Comparison between the design in the application and the cited design
(1) Article to the design

The article to the design of the design in the application is "EXERCISE TOOL" and the article to the design of the cited design is "PHYSICAL TRAINING EQUIPMENT". The two of them are used for exercise to contribute to the training of a body, and thus the articles to the design of the two designs are common.
(2) Form

In comparison of forms of the two designs, mainly the following common features and different features are admitted.

Also, for comparison, the orientation such as a front, a top, and the like in the drawings of the design in the application is applied to the cited design (the direction of the drawings of the cited design is made to correspond to that of the design in the application (a photograph figure part on the upper right of Page 3/6 in Appendix 2 is made to be the front, the orientation of the figures is made to match that of the design in the application, and each figure follows that).
(2-1) Common features
The two designs are common, as the basic constitutions,
(A) in the point that the two designs are composed of a main part and a handle part as a whole, and the main part has a generally columnar shape and is provided with two kinds of handle parts on a peripheral side surface thereof,
as the specific constitutions,
(B) in the point that the main part is transparent, and a ratio of vertical length (a diameter) and lateral length is about 1:4.5 in a front view,
(C) in the point that in the one kind of the handle part, in a front view, handles whose end portions are turned generally in a circumferential direction are symmetrically arranged at an interval in a longitudinal direction of the main part, as a pair (hereinafter, referred to as the circumferential handle parts), and in the other kind of the handle parts, handles whose end portions are turned in a generally axial direction are symmetrically arranged at a slight interval, as a pair (hereinafter, referred to as the axial handle parts),
(D) in the point that the shape of the four handles arranged on the main part are generally the same, and both ends of generally belt-shaped grip strings are fixed on an oval sheet-shaped base part at an interval, and
(E) in the point that, at the one end of the main part, an injection inlet portion for injecting a fluid and the like which has a generally circular shape almost full in the end is provided.
(2-2) Different features
The two designs are different, as the specific constitutions,
(A) in the point that concerning a position on the main part of the two pairs of the handle parts, in the design in the application, the two kinds of the handle parts are arranged on opposite sides to each other generally in the circumferential direction,

whereas in the cited design, it is recognized that the circumferential handle parts are arranged at positions separated from each other in the circumferential direction by one quarter of a circle, since the circumferential handle parts can be observed from generally front and the other axial handle parts can be observed from generally right beside in the photograph figure part on the upper right of Page 3/6 in Appendix 2,
(B) in the point that concerning an inclination of the handles of the handle parts, in the design in the application, the circumferential handle parts incline inward about 75 degrees in a front view and form a generally inverted W -shape removing the center “v”, and the other pair of the handle parts incline about 30 degrees in a rear view, and form a flat generally inverted W-shape removing the center “v”, whereas in the cited design, the handle parts of the circumferential handle parts are generally in parallel (about 90 degrees) in a vertical direction, and the axial handle parts are in parallel side (about 180 degrees) by side on one straight line, in a front view,
(C) in the point that concerning the shape of the handle parts, in the design in the application, the length of the one handle (composed of the base part and the grip string) is about one-third of the length of the main part, and the grip string is covered by a thick member except for both ends, whereas in the cited design, the length of the one handle is about two-fifths of the length of the main part, and the grip string has a thin band shape,
(D) in the point that in the design in the application, pattern and the like are not especially arranged on the main part in a front view, whereas in the cited design, a horizontal rectangular print part is arranged between the handles in a front view,
(E) in the point that in the design in the application, a small circular cover portion can be recognized in a left side view, whereas in the cited design, although an open cover state can be confirmed from a photograph figure part on the lower left of Page 3/6 in Appendix 2, the shape of the cover portion is unclear, and
(F) in the point that the design in the application is one to which tone and color are not provided throughout, whereas in the cited design, the main part, the handle parts, the injection inlet portion, and the horizontal rectangular shaped print part are black.

2 Similarity of the two designs

Evaluating and summarizing the influence exerted by the above common features and the different features to the determination of similarity between the two designs, similarity between the two designs is deliberated as the entire design and judged.

Although the two designs are common in the articles to the designs, the forms of the two designs are as follows.

(1) Evaluation of the common features

The common feature (A) listed as the basic constitutions is merely a common feature in a case of generally taking the form of the two designs into consideration, and thus it cannot be said that the influence exerted by the common feature (A) on the determination of similarity of the two designs is large. Also, it cannot be said that the common features (B) and (E) listed as the specific constitutions are features common only to the two designs, since the one having a transparent main part and an aspect ratio of about 1:4.5 and provided with a generally circular injection inlet part for injecting a fluid and the like at one end of the main part is a commonly seen shape in the field of the article of "Exercise Tool" used for training the body by putting water and the like

therein. Concerning the common features (C) and (D), as the layout and shape of the handle parts, providing the two kinds of the hand parts such as the circumferential handle parts and the generally axial handle parts, and making the handles have a shape in which both ends of the generally belt-shaped grip string are fixed on the oval sheet-shaped base part are commonly seen in the field of the article of "Exercise Tool," and thus it cannot be said that the common features especially attract the attention of consumers, and the effect of these points on the determination of similarity between the two designs is small.

Therefore, the effect of the common features (A) to (D) on the determination of similarity between the two designs is small in any case, and even considering the effects caused together by the whole of the common features, the common features are not strong enough to lead to the determination of their similarity.

(2) Evaluation of the different features

Against this, concerning each different feature related to the specific constitutions of the two designs, the different feature (A) is a difference in the layout position to the main part of the handle part, the different feature (B) is a difference in the inclination of the handles, and both are differences in the arrangement of the handles. Although with regard to exercise equipment, consumers pay attention to the handle used when grasping or holding it, and in particular, their arrangement and inclination also relate to the ease to hold when used or possible training variations, the points that the circumferential handle parts and the axial handle parts are each arranged in the opposite sides in the circumferential direction, the handles of the circumferential handle parts incline inward about 75 degrees in a front view and form a generally inverted W-shape removing the center “v” , and the handles of the axial handle parts incline about 30 degrees and form a flat generally inverted W-shape removing the center “v”, had not been seen prior to the filing of the present application and can be said to be a unique form of the design in the application. An influence exerted by these points on determination of similarity between the two parts is extremely large.

Also, the different feature (C) is a partial difference in the size of the handles to the main part and the shape of the grip string, and although the grip strings are seen in the two designs, since consumers pay attention to the ease to holding and focus on the size and shape of the handles, an influence exerter by this point on determination of similarity between the two designs is of a certain degree regarding "Exercise Tool". Furthermore, although the different feature (D) relates to the presence/absence of the print part, according to the photograph of an implementation of the cited design, one provided with a rectangular print part for adding a product name and the like to the product implementation is commonly seen in the field of the article, and the print part of the horizontal rectangular shape is the most commonly seen among them, so that an influence exerted by this point on determination of similarity between the two parts is small. Then, the different feature (E) is a partial difference in the cover portion expressed at the end about the injection inlet part of the main part, and thus an influence exerted by this point on determination of similarity between the two parts is small.

Finally, concerning the different feature (F), regarding the presence/absence of color, both forms are ordinary ones, not limited to this type of article, so that an influence exerted by this point on determination of similarity is small.

Therefore, the different feature (C) gives an influence on the determination of similarity between the two designs to a certain degree, and even if influences exerted by the different features (D) to (F) on determination of similarity between the two designs are small, since the different features (A) and (B) extremely significantly affect the determination of the similarity between the two designs, considering and summarizing a visual effect shown by the different features (A) to (F) synergistically, the different features exceed the common features and give the impression that the two designs differ from each other. Therefore, it cannot be said that the design in the application is similar to the cited design.

(3) Summary

Therefore, articles to which the two designs are respectively applied common. However, while the common features of their configurations are not strong enough to lead to the determination of their similarity, the effects of the different features on the determination of their similarity are far stronger than those of the common features, and give the impression that the two designs differ from each other as the entire design. Hence, it cannot be said that the design in the application is similar to the cited design.

No. 5 Closing

As described above, it cannot be said that the design in the application applies to a design listed in Article 3(1)(iii) of the Design Act based on the cited design of the examiner's decision, so that it cannot be determined that the design in the application should be rejected due to the reasons for refusal stated in the examiner's decision.

Moreover, as a result of the further body's examination, no other reasons for rejecting the present application can be found.

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

October 24, 2018

Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: WATANABE, Kumi
Administrative judge: TAKESHITA, Hiroshi

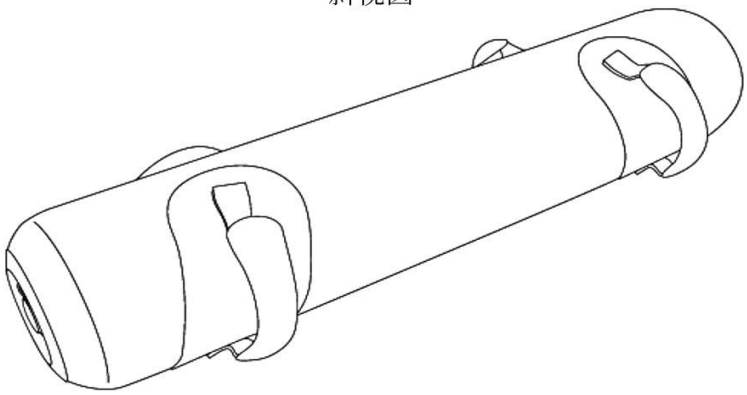
別紙第１　　本願意匠（意願２０１７－０１１９３０）　　Ｃ・Ｐ

【意匠に係る物品】運動用具

【意匠に係る物品の説明】本物品は、持ち手を握るもしくは本体を抱え込むようにして持ち、本体を振ることにより腕や胴体の筋力を鍛錬するための運動用具である。本体内には流体や気体等を入れることができ、それにより運動用具の重量を調整することができる。

【意匠の説明】本物品の本体は透明である。

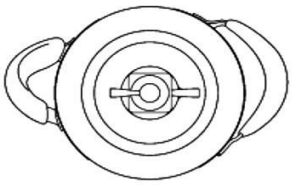
斜視図



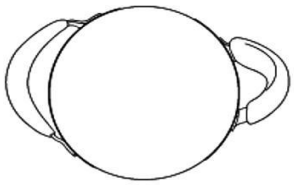
正面図

背面図

左側面図



右側面図



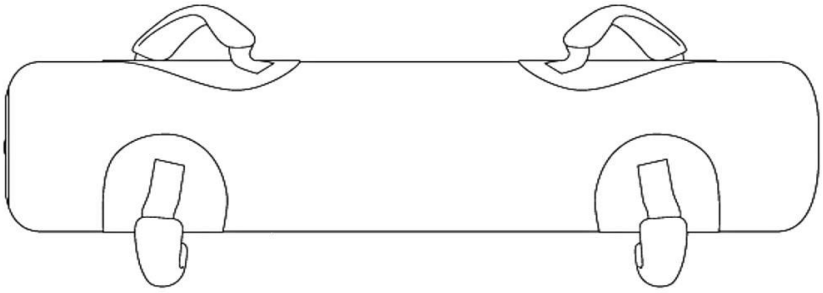
別紙第１　　本願意匠（意願２０１７－０１１９３０）　　Appendix 1　The design in the application (Japanese Design Application No. 2017-011930)

【意匠に係る物品】運動用具　　[Article to the design] EXERCISE TOOL

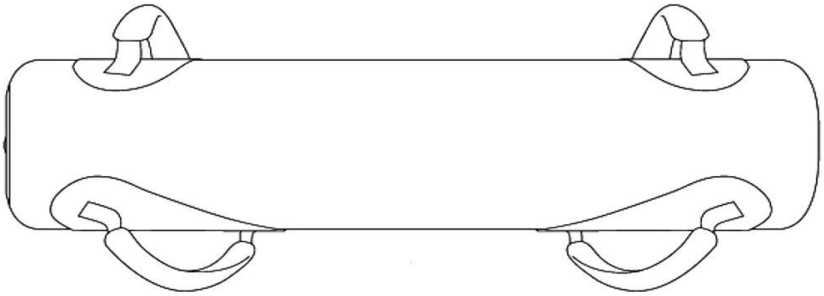
【意匠に係る物品】本物品は、持ち手を握るもしくは本体を抱え込むようにして持ち、本体を握ることにより腕や胴体の筋力を鍛錬するための運動用具である。本体内には液体や気体などを入れることができ、それにより運動用具の重量を調整することができる。 [Description of the article to the design] The article is an exercise tool for training the muscular power of an arm or a body by grasping a handle or grasping a main part while having it so as to shake the main part. A fluid, gas, etc. can be put in the main part and thereby the weight of the exercise tool can be adjusted.
【意匠の説明】本物品の本体は透明である。 [Description of the design] The main part of the article is transparent.

斜視図　Perspective View
正面図　Front view
背面図　Rear view
左側面図　Left Side View
右側面図　Right Side View

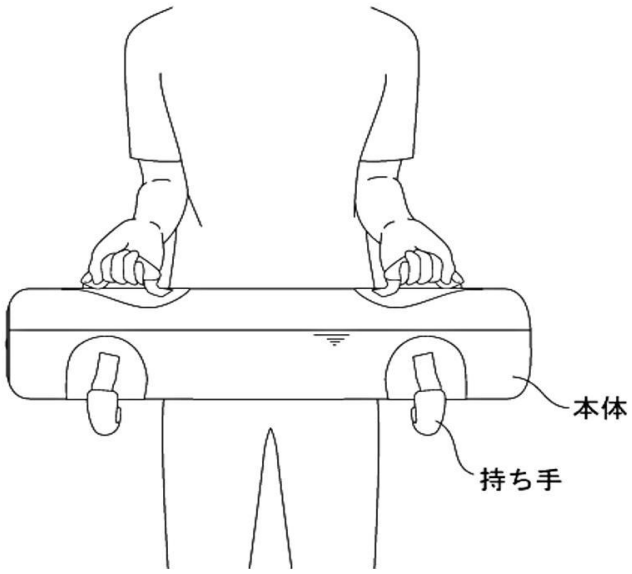
平面図



底面図



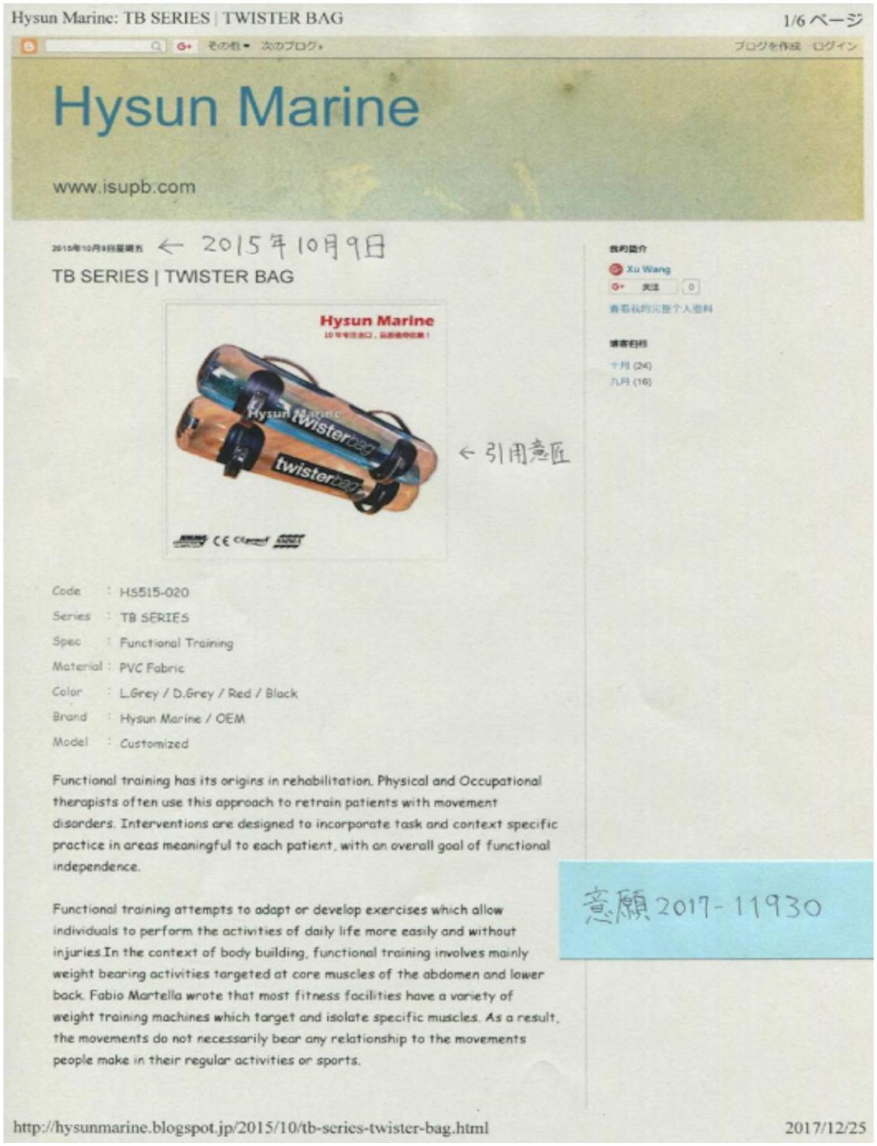
使用状態参考図



平面図　Top View
底面図　Bottom View
使用状態参考図　Reference View showing the state of use
本体　　Body
持ち手　Handle

別紙第２　　引用意匠

著者の氏名　　Xu Wang
表題　　TB SERIES | TWISTER BAG
掲載箇所　　ウェブサイト「Hysun Marine」
媒体のタイプ　　ｏｎｌｉｎｅ
掲載年月日　　２０１５年１０月９日
検索日　　２０１７年１２月２５日検索
情報の情報源　　インターネット
情報のアドレス　http://hysunmarine.blogspot.jp/2015/10/tb-series-twister-bag.html
に掲載された「身体鍛錬用器具」の意匠



別紙第２　引用意匠　　Appendix 2　The cited design
著者の氏名　Ｘｕ　Ｗａｎｇ　　Name of Author　Xu Wang
表題　ＴＢ　ＳＥＲＩＥＳ　｜　ＴＷＩＳＴＥＲ　ＢＡＧ　　Title　　TB SERIES | TWISTER BAG
掲載箇所　ウェブサイト「Ｈｙｓｕｎ　Ｍａｒｉｎｅ」　　Relevant　　Part　　Website "Hysun Marine"
媒体のタイプ　ｏｎｌｉｎｅ　　Type of Media　online

掲載年月日　２０１５年１０月９日　　Date of Publication　October 9, 2015
検索日　２０１７年１２月２５日検索　　Retrieving Date　Retrieved on December 25, 2017
情報の情報源　インターネット　　Source of Information　Internet
情報のアドレス　ｈｔｔｐ：／／ｈｙｓｕｎｍａｒｉｎｅ．ｂｌｏｇｓｐｏｔ．ｊｐ／２０１５／１０／ｔｂ－ｓｅｒｉｅｓ－ｔｗｉｓｔｅｒ－ｂａｇ．ｈｔｍｌ　Address of Information　http://hysunmarine.blogspot.jp/2015/10/tb-series-twister-bag.html".
に掲載された「身体鍛錬用器具」の意匠　　The design of "PHYSICAL TRAINING EQUIPMENT" published in

Nowadays, functional training already become a kind of sport for all the people for fitness! **Hyusn Marine Twister Bags** are design for all people use no matter at home or in the gay.Functional training, if performed correctly, will lead to better joint mobility and stability, as well as more efficient motor patterns. Improving these factors decreases the potential for an injury sustained during an athletic endeavor. performance in a sport.[citation needed] The benefits may arise from the use of training that emphasizes the body's natural ability to move in six degrees of freedom.In comparison, though machines appears to be safer to use, they restrict movements to a single plane of motion, which is an unnatural form of movement for the body and may potentially lead to faulty movement patterns or injury.In 2009 Spennewyn conducted research, published in the Journal of Strength and Conditioning Research which compared functional training to fixed variable training techniques, this was considered the first research of its type comparing the two methods of strength training.

Results of the study showed very substantial gains and benefits in the functional training group over fixed training equipment. Functional users had a 58% greater increase in strength over the fixed-form group. Their improvements in balance were 196% higher over fixed and reported an overall decrease in joint pain by 30%. For more details, please feel free **contact us.**

Twister Bags Reference Photos:

意願2017-11930

• *Twister Bags Training Program:*

↑
引用意匠

意願2017-11930

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