

Appeal decision

Appeal No. 2017-2496

Appellant HITACHI CONSTRUCTION MACHINERY CO. LTD.

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The case of appeal against the examiner's decision of refusal of Trademark Application No. 2015-30000 has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

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 "Detailed Description of Trademark" in Attachment 1(2). The application for its registration was filed on April 1, 2015 by setting Class 7 "Oil hydraulic shovel" as the designated goods. Thereafter, the "detailed description of trademark" was amended as described in Attachment 1(3) according to the Written Amendment received on February 21, 2017 by 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 in Article 3(2) of the Trademark Act.", and "The Application does not meet the requirement in Article 5(5) of the Trademark Act.", and refused the application.

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

The trademark in the Application is a color mark specified from the description in the trademark description field and the detailed description of the trademark. The color used for goods is selected to enhance the attractiveness of the goods in many cases, and

cannot be recognized as a mark for indicating the source of goods and 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 recognize the trademark as a mark identifying the source regardless of whether the applicant intends to adopt or use the trademark. Even if each company actually uses a corporate color for main products and the Applicant uses the color of the trademark in the Application as a 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 when 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 normally used or may be used for goods. The trademark in the Application only simply displays characteristics of the goods in a common manner.

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

It is acknowledged that the Applicant has continuously used the color deemed identical with the color of the trademark in the Application for oil hydraulic shovels at least since 1977 for about 40 years, and it is assumed that a sales region is spread across Japan. Furthermore, it is acknowledged that the Applicant has continuously made advertisement in magazines, on television, or the like since 1977. However, a person other than the Applicant actually sells goods to which a color the same as or similar to that of the trademark in the Application is applied, and in addition, the characters of "HITACHI" or the like are added to the goods using the color of the trademark in the Application. Normally, it is estimated that consumers identify the goods using these as a mark. 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, and it is not possible to objectively grasp the recognition by consumers regarding the color of the trademark in the Application. Therefore, even if the evidences submitted by the applicant are comprehensively examined, 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 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 in Article 3(2) of the Trademark Act.

(3) Regarding compatibility of 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 is not acknowledged as display that invokes a specific color in general.

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

3 Ex officio examination of evidence in the body

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

4 Appellant's opinion with respect to examination of evidence (gist)

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

Furthermore, a distribution amount of these products is extremely smaller than the entire market scale of "oil hydraulic shovel" which is the designated goods of the trademark in the Application, consumers thereof are different from consumers of "oil hydraulic shovel" which is the designated goods of the application, or the color coated on the outer surface is different from the trademark in the Application.

In addition to this point, the number of companies that enter the oil hydraulic shovel market is small, and each company has sold oil hydraulic shovels already using a specific color that is recognized by consumers as indicated by Evidence A No. 1 submitted on February 29, 2016 that complements the written opinion of this case submitted on the same day. Therefore, even if the Applicant monopolizes the color of the trademark in the Application, this does not unreasonably narrow a design choice of other companies.

In view of these circumstances, even if the products as indicated in Attachment 2 are confirmed on the websites, the right given to the Applicant regarding the designated

goods "oil hydraulic shovel" as a result of the registration of the trademark in the Application does not unreasonably limit the activities of the other companies in the market.

5 Judgment by the body

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

As a result of the amendment of the detailed description of trademark as indicated in Attachment 1(3), the color thereof is clarified. Therefore, the application meets the requirement in Article 5(5) of the Trademark Act.

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

As indicated in Attachments 1(1) and 1(3), the trademark in the Application is a trademark in which the color of "Orange (Munsell value: 0.5YR5.6/11.2)" is used for booms, arms, scoops, cylinder tubes, building covers, and counterweights of the product "oil hydraulic shovel", and sets Class 7 "Oil hydraulic shovel" as the designated goods.

Incidentally, the color is selected to enhance an aesthetic impression and attractiveness of the goods for advertisement of the goods or the like, in addition to the goods and packages thereof. It is reasonable to understand that the color is not recognized as a mark for displaying the source of the goods or for distinguishing relevant products from others.

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

Then, even if the trademark in the Application, in which the color of "Orange (Munsell value: 0.5YR5.6/11.2)" is used for booms, arms, scoops, cylinder tubes, building covers, and counterweights of the product "oil hydraulic shovel", is used for its designated goods, consumers coming into contact with this only recognize that the trademark in the Application represents the color that is usually used or may be used to enhance the aesthetic impression and attractiveness of the goods rather than recognize this as a so-called corporate color as alleged by the Appellant. It should be said that the color is not recognized as a mark for displaying the source of the goods or for distinguishing relevant products from others.

Therefore, the trademark in the Application consists of only the mark displaying the characteristics (color) of the goods in a common manner. and falls under Article 3(1)(iii) of the Trademark Act.

(3) Regarding the property for distinguishing relevant products from others through use

of the trademark in the Application

In the written opinion dated on February 29, 2016 (hereinafter, referred to as "Opinion 1") in the original examination, the written request for trial dated February 21, 2017 (hereinafter, referred to as "Written request"), and the written opinion dated March 18, 2019 (hereinafter, referred to as "Opinion 2"), the Appellant alleged that "because the color of the trademark in the Application is easily noticed by traders and consumers and creates a strong impression on traders and consumers, the trademark in the Application independently acquires the property for distinguishing relevant products from others through use over the years by the Appellant and falls under Article 3(2) of the Trademark Act". However, this is on the assumption 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 according to Opinion 1, the Written request, and Opinion 2 submitted by the Appellant, the Supplemental statement of proceedings dated February 29, 2016 in the original examination, the evidences submitted with the Supplemental statement of proceedings dated February 21, 2017 in the body, and the Supplemental statement of proceedings dated on March 19, 2019 (Evidence A No. 1 to Evidence A No. 20) (including their branch numbers) (hereinafter, for example, abbreviate and indicate as "A-1"), hereinafter, the property for distinguishing relevant products from others through use of the trademark in the Application (applicability of the trademark in the Application to Article 3(2) of the Trademark Act) will be discussed.

A Regarding Article 3(2) of the Trademark Act

The object of Article 3(2) of the Trademark Act indicates that even a predetermined trademark indicated in Article 3(1)(iii) of the same Act, a trademark by which consumers are able to recognize the goods (services) as being connected with a certain person's business as a result of use can be registered. This object indicates that, in a case where a specific person has exclusively and continuously used the trademark for a long time as a mark for distinguishing relevant goods (service) of the person from others without being used by others, it can be said that the exclusive use of the trademark by the specific person is virtually accepted in the business field of the goods (service). Therefore, it is understood that a demand for public interest to open use opportunities to other business operators decreases, and the trademark has acquired the property for distinguishing relevant goods (service) from others, and as a result, has acquired a function as a trademark (rendition of judgement on April 10, 2007, refer to 2006 (Gyoke) 10450 the decision of the Intellectual Property High Court, fourth section) (underline by the collegial body).

Therefore, whether or not the trademark in the Application meets the requirement

in Article 3(2) of the Trademark Act will be determined below in consideration of the above decision.

B Regarding the allegation according to Opinion 1, Written request, and Opinion 2 submitted by the Appellant and the submitted evidences (A-1 to A-20) (including their branch numbers)

(A) Regarding the Appellant

The Appellant was established on October 1, 1970, and the business object is "manufacture, sales, rental, and maintenance services of construction machines, transporting machines, environment-related products, or the like". The Appellant is a company with stated capital of 81,576,590,000 yen, and the number of employees of the non-consolidated company is 4,341 (refer to company profile on the website of the Applicant, at the date of March 31, 2019).

(B) Regarding use start time, use period, and use region of designated goods "oil hydraulic shovel" to which the trademark in the Application is applied

As indicated in Attachments 1(1) and 1(3), the trademark in the Application is a trademark in which the color of "Orange (Munsell value: 0.5YR5.6/11.2)" is used for booms, arms, scoops, cylinder tubes, building covers, and counterweights of the product "oil hydraulic shovel".

Then, the Appellant has continuously used the trademark in the Application as the color of coating of the components of the designated goods "oil hydraulic shovel" since 1974 (A2-1 to A2-21, A5-1 and A5-2, and A8-1 to A8-12).

Furthermore, the Appellant sells the designated goods "oil hydraulic shovel" to which the trademark in the Application is applied, across Japan (A5-2, A12-1 to A12-6).

(C) The sales volume and market share of the designated goods "oil hydraulic shovel" to which the trademark in the Application is applied.

The sales volumes of the designated goods "oil hydraulic shovel" to which the trademark in the Application is applied are 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.

Furthermore, the market share in 1974 alleged by the Appellant is 15.7%, and the market share is 22.2% in 2014 (A5-1 and A5-2).

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

The Appellant has placed advertisements, including the image of the oil hydraulic shovel to which the trademark in the Application is applied, in magazines in the construction machine field such as "E-contechure", "NIKKEI construction", "Contractor design of construction", "Construction machine", "Mechanization of construction", or the like 13 times in total (A6-1 to A6-13).

Furthermore, the Appellant ran TV commercials in which the oil hydraulic shovel to which the trademark in the Application is applied is displayed, in September 1990, February 1991, December 1993, November 1995, January 1997 to June 1998, May 2000 to September 2001, October 2007 to September 2010, November 2010 to September 2012, November 2012 to October 2014, and November 2014 (A7-1 to A7-4, A13-1 to A13-7).

(E) Regarding questionnaire research

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 grasp the recognition of traders and consumers of the oil hydraulic shovels with respect to the color of the trademark in the Application, the Appellant requested Rakuten Research, Inc. and conducted a questionnaire research in 2017 for employees in the construction industry (A10-1 and A10-2).

According to "Questionnaire research regarding colors of oil hydraulic shovels -report-" (A10-1), questionnaire research targets are traders and consumers of oil hydraulic shovels across Japan. As a result of sending questionnaires to employees in the construction industry at 496 locations, employees in the construction industry at 168 locations answered the questionnaire.

Then, the employees in the construction industry at 163 locations among 168 locations (recognition rate 97.0%) answered that the oil hydraulic shovel to which the trademark consisting of only the orange color is applied is a product handled by "Hitachi Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd.", "Hitachi, Ltd.", or the like (A10-1).

Furthermore, according to "Questionnaire research regarding colors of oil hydraulic shovels -report-" (A10-2), questionnaire research targets are traders and consumers of oil hydraulic shovels across Japan. As a result of sending questionnaires to employees in the construction industry at 502 locations, employees in the construction industry at 193 locations answered the questionnaire.

Then, the employees in the construction industry at 185 locations among 193 locations (recognition rate 95.9%) answered that the oil hydraulic shovel to which the trademark consisting of only the orange color is applied is a product handled by "Hitachi

Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd.", "Hitachi, Ltd.", or the like (A10-2).

C Judgment

According to B described above, the Appellant is a company that was established in 1970, manufactures and sells construction machines and transporting machines including the product "oil hydraulic shovel", started to use the color "orange" as the color of the coating of the parts including booms, arms, scoops, cylinder tubes, building covers, and counterweights of the product "oil hydraulic shovel" in 1974, and sells the products across Japan. The sales volume of the oil hydraulic shovels is 2,286 in 1974 and is 6,956 in 2014, and the market share alleged by the Appellant is 15.7% in 1974 and is 22.2% in 2014. The advertisements including the image of the oil hydraulic shovel to which the trademark in the Application is applied have been made in magazines, TV commercials, or the like in the construction machine field. In the questionnaire research conducted by the Appellant in 2017, the employees in the construction industry at 163 locations and 185 locations answered that the oil hydraulic shovel to which the trademark consisting of only the orange color is applied is a product handled by construction machine manufacturers such as "Hitachi Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd.", "Hitachi, Ltd.", or the like. These are acknowledged based on the evidences submitted by the Appellant.

However, (A) as indicated in Attachment 2, in the field in which construction machines are handled, there is a fact such that the color similar to orange that is the color of the trademark in the Application is usually used for various construction machine products, (B) it is acknowledged that, in the product catalogs issued by the Appellant (A2-1 to A2-21), the color deemed identical from the trademark in the Application is used for booms, arms, scoops, cylinder tubes, building covers, and counterweights of the oil hydraulic shovels, however, together with the color, characters indicating a used type or the like are used for the building cover of the oil hydraulic shovel (A2-1 to A2-12, A2-15, A2-16, and A2-19 to A2-21), characters of "HITACHI" are used for the boom of the oil hydraulic shovel (A2-1 to A2-21), and characters of "HITACHI" are used for the counterweight part of the oil hydraulic shovel (A2-1 to A2-7, A2-9 to A2-13, A2-15, and A2-16), accordingly, it can be said that traders and consumers coming into contact with this naturally pay attention to the characters indicating the used type or the like and the characters of "HITACHI" displayed on the product, (C) the evidences regarding the sales volumes and the market share are the sales volumes and market shares before 2014, and sales volumes and market share in and after 2015 and up to the present day cannot be confirmed, and in addition, the number of "demands" described in "sales volume of oil

hydraulic shovels by year" (A5-1) is not endorsed, and accordingly, it cannot be confirmed whether or not the market share by year alleged by the Appellant is correct, (D) the number of times when the advertisement of the product "oil hydraulic shovel" to which the trademark in the Application is applied ran on the magazines in the construction machine field is about 13, and the number of issues and the sales volume of the magazine on which the advertisement is placed are unknown (A6-1 to A6-13), (E) the period in which the TV commercials regarding the oil hydraulic shovel to which the trademark in the Application is applied have been broadcasted is limited (A7-1 to A7-4), (F) as described in "recognition determination criteria" of "1. Search outline" ("1" is written in Roman numeral) according to "Questionnaire research regarding colors of oil hydraulic shovels -report- conducted by Rakuten Research, Inc." (A10-1 and A10-2), that "it is determined that, in addition to "Hitachi Construction Machinery Co., Ltd.", "Hitachi Construction Machinery Japan Co., Ltd." that is a sales company, "日立 (Hitachi, Ltd.)", "ヒタチ (Hitachi, Ltd. written in Katakana), and "HITACHI" among valid responses indicate the recognition of Hitachi Construction Machinery Co., Ltd.", the number of employees in the construction industry who recognized only the Appellant (Hitachi Construction Machinery Co., Ltd.) and answered that in "questionnaire research sheet" is not clear, and it cannot be immediately determined that the recognition rate of 97.0% (A10-1) and 95.9% (A10-2) are appropriate values, (G) because the type of the products in the construction machine field is not limited to the oil hydraulic shovel, and variety of products exist, existence of a large number of traders and consumers of the construction machines can be estimated and acknowledged; however, the employees in the construction industry who are targets of the questionnaire research are limited to traders and consumers of oil hydraulic shovels, (H) it cannot be said that each of the number 496 that is the number of employees in the construction industry who are the targets of the questionnaire research, the number of answers 168 (A10-1), the number 502 that is the number of employees in the construction industry who are the targets of the questionnaire research, and the number of answers 193 (A10-2) is large, and it cannot be immediately said that the search result reflects actual recognition of traders and consumers of construction machines. According to these, it cannot be said that this case falls under a case where the Appellant has continuously and exclusively used the trademark in the Application in which the color of "Orange (Munsell value: 0.5YR5.6/11.2)" is used for booms, arms, scoops, cylinder tubes, building covers, and counterweights of the product "oil hydraulic shovel" as a mark for distinguishing products relating to the business of the Appellant from others for a long time without being used by others.

D Summary

When A to C described above are comprehensively determined, it is not acknowledged that the trademark in the Application meets the requirement in Article 3(2) of the Trademark Act.

6 Appellant's allegation

The Appellant alleges in the Opinion 1, the Written request, and the Opinion 2 that "The trademark in the Application does not fall under the provisions in Article 3(1)(iii) of the Trademark Act. Even if the trademark in the Application falls under the same article, as a result of use of the trademark in the Application by the Appellant for a long time, traders and consumers widely recognize the trademark in the Application. Therefore, the trademark in the Application falls under Article 3(2) of the Trademark Act. Furthermore, the application meets the requirement in Article 5(5) of the Trademark Act. Accordingly, the reasons for refusal stated in the examiner's decision is not applicable".

As described in 5(1) above, even if the application meets the requirement in Article 5(5) of the Trademark Act, the trademark in the Application falls under the provisions of Article 3(1)(iii) of the same Act as described in 5(2) above, and it is not acknowledged that the trademark in the Application has the property for distinguishing relevant products from others through use as described in 5(3) above and does not meet the requirement in Article 3(2). Therefore, the Appellant's allegation cannot be accepted.

In addition, there is no circumstances in which rebuttal based on Opinion 1, the Written request, and Opinion 2 by the Appellant should be adopted.

7 Summary

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

The trademark for which registration is sought (hereinafter, referred to as "trademark") is a color mark and has a configuration in which taxi yellow (Munsell value: 0.5YR5.6/11.2) is applied to parts including the boom, the arm, the scoop, the cylinder tube, the building cover, and the counterweight of the oil hydraulic shovel. Note that the broken line indicates an example of the shape of the product and is not an element configuring the trademark.

(3) Detailed Description of Trademark (after amendment)

The trademark for which registration is sought (hereinafter, referred to as "trademark") is a color mark and has a configuration in which orange (Munsell value: 0.5YR5.6/11.2) is applied to parts including the boom, the arm, the scoop, the cylinder tube, the building cover, and the counterweight of the oil hydraulic shovel. Note that the broken line indicates an example of the shape of the product and is not an element configuring the trademark.

Attachment 2 (fact such that the color similar to the color "orange" of the trademark in the Application is usually used for various construction machine products in the field in which construction machines including the designated goods of the trademark in the Application are handled)

1 There is a fact such that, in the website of Sumitomo Heavy Industries, Ltd., under the title of "oil hydraulic shovel", a color similar to orange that is the color of the trademark in the Application is used for the product "oil hydraulic shovel" in the field of "SH200HB" in the item of "features".

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



2 There is a fact such that, on the website of Kubota Corporation, under the title of "Kubota Construction Machinery", a color similar to orange that is the color of the trademark in the Application is used for the product "wheel loader" in the field of "snow removal vehicles" of "options" in the item of "product information wheel loader".
(http://www.kenki.kubota.co.jp/product/wheel_1)



3 There is a fact such that, on the website of used heavy machine and construction machine information site heavy machine box, a color similar to orange that is the color of the trademark in the Application is used for the product "mini shovel" (manufacturer: IHI) under the description of "price: 600,000 yen (consumption tax included) under the title of "mini shovel".
(https://juki-box.net/modules/juki/index.php?action=DataView&data_id=1015)



4 There is a fact such that, on the website of used heavy machine and construction machine information site heavy machine box, a color similar to 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" under the title of "H7, KOBELCO, rough terrain crane RK160-2".

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



5 There is a fact such that, on the website of used heavy machine and construction machine information site heavy machine box, a color similar to orange that is the color of the trademark in the Application is used for the product "aerial work platform" under the description of "price: ASK" under the title of "ISUZU Juston 90,000 km aerial work platform Tadano AT-240CG".

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



6 There is a fact such that, on the website of Ahern Japan, a color similar to orange that is the color of the trademark in the Application is used for the product "mast-type aerial work platform" in the field of "mast-type aerial work platform TM12" in the item of "self-propelled scissors lifter" under the title of "Products".

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



7 There is a fact such that, on the website of " TOYOTA L&F", a color similar to orange that is the color of the trademark in the Application is used for the product "shovel loader" in the field of "shovel loader" under the title of "product information shovel loader". (<http://www.toyota-lf.com/products/detail/shovel/index.html>)



8 There is a fact such that, on the website of used heavy machine and construction machine information site heavy machine box, a color similar to 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) under the title of "H3 TR160M-2 manufactured by Tadano with car inspection 31/1 crane documents included". (https://juki-box.net/modules/juki/index.php?action=DataView&data_id=988)



9 There is a fact such that, on the website of used heavy machine and construction machine information site heavy machine box, a color similar to 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)" under the title of "H29 TOYOTA GENE0 2.5 t diesel automatic".

(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