

Appeal decision

Appeal No. 2019-6526

Appellant KIKKOMAN CORPORATION

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The case of appeal against the examiner's decision of refusal of Trademark Application No. 2017-42211 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 standard characters "ステーキしょうゆ (suteki shoyu; steak soy sauce)", and the application for its registration was filed on March 29, 2017 by setting Class 30 "Seasoning to which soy sauce is added" as the designated goods. Thereafter, the designated goods of the present application were amended to Class 30 "Steak sauce to which soy sauce is added; steak spice to which soy sauce is added" by a written amendment dated on March 23, 2020 in the body.

2 Gist of reasons for refusal stated in the examiner's decision

The trademark in the Application consists of the standard characters "ステーキしょうゆ", and the characters "ステーキ (suteki; steak)" in the configuration represent "dish of grilled thick cut of fish or meat, in particular, abbreviation of 'beef steak'". In addition, the characters "しょうゆ (shoyu; soy sauce)" indicate seasoning, and actual circumstances in which "しょうゆ" is usually used for seasoning for steaks are acknowledged. It can be said that, from the trademark in the Application, meanings of "product (seasoning) for steaks to which soy sauce is added" is naturally perceived in the relation with the designated goods.

Therefore, it is reasonable to understand that the trademark in the Application simply represents the raw material, the application, and the quality of the goods in a common manner and does not have a function for distinguishing relevant goods from others. Accordingly, because the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and is likely to cause false recognition of quality of the goods when being used for goods other than the above goods, the trademark in the Application falls under Article 4(1)(xvi) of the Trademark Act.

Moreover, in the written opinion, the Applicant alleges that the trademark in the Application has been widely recognized by consumers as a trademark indicating the product provided by the Applicant through long-time use by the Applicant. However, in consideration of each submitted document, the used trademark has a configuration in which the slightly-thick and designed characters "ステーキ" and the characters "しょうゆ" are vertically written in two lines on the side surface of the container package of the used product and Latin alphabetic characters "Kikkoman" are arranged in the lower portion thereof, or a configuration in which the characters Kikkoman, the slightly-thick and designed characters "ステーキ", and the characters "しょうゆ" are vertically written in three lines. Furthermore, it seems that the trademark was introduced or used together with the characters of the trademark "キッコーマン (Kikkoman)" in the introduction articles, the advertisements, or the like of the used product.

Then, in view of various circumstances relating to the use form of the trademark, it is natural to understand that traders and consumers coming into contact with the used product or advertisement media do not recognize that the source of goods is the Applicant only by the characters "ステーキ" and "しょうゆ", and rather recognize that the source of goods is the Applicant by considering the trademark "Kikkoman" or the characters "キッコーマン". Therefore, it should be said that the trademark portion having the function for distinguishing the used product from others is not "ステーキ" and "しょうゆ" and is "Kikkoman" or "キッコーマン".

Therefore, even if the actual circumstances of the use of the trademark in the Application by the Applicant are comprehensively considered, it cannot be acknowledged that the trademark in the Application has come to be widely known by traders and consumers to a degree that traders and consumers are able to recognize the goods as being connected with a certain person's business only by the characters "ステーキ" and "しょうゆ" as through the use (therefore, does not meet the requirements of Article 3(2) of the Trademark Act).

3 Inquiry issued by the body

The chief administrative judge in the body presented the examples as indicated in Attachment 1 to the Appellant on February 3, 2020, and then issued an inquiry indicating the opinion that the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and does not meet the requirements provided in Article 3(2) of the same Act, and demanded an answer to the inquiry within a designated period.

4 Appellant's answer to the inquiry

The Appellant submitted a written reply dated March 23, 2020 and a written statement dated June 5, 2020 with respect to the inquiry in 3 above and summarized and alleged as follows.

(1) General names of seasoning for steaks are "steak sauce" and "steak spice". Although the trademark in the Application implies steak sauces and steak spices to which soy sauce is added that are the designated goods thereof, the trademark in the Application does not fall under a trademark that only simply represents the quality of the goods. Furthermore, it cannot be said that only several use examples of products that are manufactured and sold in a specific area directly display the quality of the goods to traders and consumers.

(2) Even if the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, it is assured that consumers can recognize the trademark in the Application as the trademark related to the business of the Appellant as a result of the use.

(3) In some trademarks "ステーキしょうゆ" in which the Appellant uses the trademark in the Application, the characters "ステーキ" and the characters "しょうゆ" are vertically written in two lines in a brush style font. However, even in a case where the fonts and the writing styles of the characters of the two trademarks are different from each other, the trademarks are considered to be identical in terms of appearance and do not lack similarity as the trademark.

(4) Even if a mark including the characters "キッコマン" and the characters "kikkoman", a goodwill mark of the Appellant, or the like in addition to the characters "ステーキしょうゆ" is displayed on the label of the product, the characters "ステーキしょうゆ", the goodwill mark, or the like are significantly different in the size and the color of the characters. Those character portions are not uniformly combined as it is considered to be unnatural that those character portions are separately observed in terms of appearance in the business. Then, the Appellant does not take an aggressive action such that the characters "ステーキしょうゆ", the characters "kikkoman", and the goodwill mark are used as a single trademark. Therefore, it is acknowledged that the trademark in the Application consisting of the characters "ステーキしょうゆ" including a form in which the characters "ステーキしょうゆ" are continuously displayed with the

characters "キッコーマン" or the like is independently used for the designated goods as a mark and has come to have the function for distinguishing relevant goods from others.

(5) In 1995, which was the year following the start of sales, the sales volume of the product for which the Applicant uses the trademark in the Application (hereinafter, referred to as "product of this case") reached about four hundred thousand cases, and the annual sales price exceeded one billion yen. In consideration of this, it can be easily estimated and acknowledged that TV commercials from 1994, which was the time of the release, to 1996 took huge cost and were placed across Japan. Furthermore, the Applicant advertised (promoted) the product of this case a plurality of times, and the product of this case was placed in many TV programs, magazines, or the like. From this, the trademark in the Application is recognized as the trademark of the Appellant and functions as a mark for distinguishing relevant goods from others in reality.

(6) The sales price and the sales volume of the product of this case were the top both in Japan and in the capital area from April 1, 2012 to March 31, 2019.

(7) Regarding the trademark in the Application, a brand recall investigation was conducted. According to this questionnaire investigation, it was acknowledged that 54.2% of 334 women in their forties to sixties who are main consumers of seasoning that occupy 47.5% of the investigation targets recalled the Appellant from the trademark in the Application. Then, 44.3% of these women in their forties to sixties answered "Kikkoman" as "a manufacturer that comes to mind when seeing the characters same as the trademark in the Application". For "the reasons", those women mainly selected any one of answers "have seen the trademark (in a shop or the like)", "famous", or "have purchased the product". Even if the trademark in the Application originally has weak distinctiveness, it can be determined, according to the investigation result, that consumers have come to be able to recognize the goods as being connected with a certain person's business through continuous use of the trademark in the Application for a long time.

5 Judgment by the body

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

As described in 1 above, the trademark in the Application consists of the standard characters "ステーキしょうゆ". In its configuration, the characters "ステーキ" and the characters "しょうゆ" are respectively known in general as words having the meaning of "dish of grilled thick cut of fish or meat, in particular, abbreviation of 'beef steak'" and the meaning of "seasoning, bronzed soup having unique odor and having delicious taste and saltiness" (meaning of each word is quoted from "Kojien 6th edition" (Iwanami Shoten, Publishers)). Therefore, it can be said that the trademark in the

Application is perceived and understood as a combination of the two words.

Then, in the business field handling seasoning including "steak sauce to which soy sauce is added and steak spice to which soy sauce is added" that are the designated goods of the present application, for example, as in the examples indicated in the original examination (Evidence A No. 1 to A No. 9), sauces or spices using soy sauce as their ingredients, soy sauce for steaks, or the like are generally manufactured and sold as seasoning for steaks or the like. Some types of such seasoning are referred to as "ステーキ醤油 (steki shoyu; steak soy sauce)" (Attachment 1).

Then, when the trademark in the Application that is the combination of the word "steak" and the word "soy sauce" is used for its designated goods "steak sauce to which soy sauce is added and steak spice to which soy sauce is added", traders and consumers coming into contact with this only perceive and understand that the trademark in the Application indicates the seasoning for steaks to which soy sauce is added; that is, the quality of the goods. It is reasonable to assume that traders and consumers do not recognize the trademark in the Application as a mark representing the source of goods or a mark for distinguishing relevant goods from others.

Therefore, because the trademark in the Application consists of only a mark that represents the quality of the goods in a common manner, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

(2) Regarding whether or not the requirements provided in Article 3(2) of the Trademark Act are met

A About Article 3(2) of the Trademark Act

The object of Article 3(2) of the Trademark Act indicating that even a predetermined trademark, which falls under Article 3(1)(iii) of the same Act, a trademark by which consumers are able to recognize the goods as being connected with a certain person's business through use can be registered is based on that it can be said that, in a case where a specified person has a record of monopolistically, exclusively, and continuously using the trademark as a mark for identifying the goods relating to the business of the specified person for a long time without the trademark being used by others, the exclusive use of the trademark by the specified person is permitted in effect in the business field relating to the product, and accordingly, it is understood that a request for public interest to open use opportunities to other business operators decreases, and the trademark has acquired the function for distinguishing relevant goods from others, and thereby the trademark has come to acquire the function as a trademark.

Incidentally, it is obvious that the trademark for which the registration is approved according to the provision of Article 3(2) of the Trademark Act is limited to

used trademarks. However, as described above, the provision of Article 3(2) that is the provision of exception to the provision of Article 3(1)(iii) or the like is based on a phenomenon such as decrease in the request for public interest and acquisition of the function for distinguishing relevant goods from others on the basis of the fact that the trademark has been used by the specified person as the mark for distinguishing the goods relating to the business of the specified person from others. For a trademark having a constitution that is not included in the range of the "use", ground for permitting the registration of the trademark according to Article 3(2) is not approved (that is, in a case where the trademark having a constitution that is not included in the range of the "use" falls under Article 3(1)(iii), there is a state where the request for public interest and lack of distinctiveness exist). Therefore, it is reasonable to understand that the similarity between the trademark to be registered and the used trademark should be strictly determined when Article 3(2) is applied (rendition of decision on April 10, 2007, refer to 2006 (Gyo-Ke) 10450 decision by Intellectual Property High Court Fourth Section).

Then, the Appellant alleges that, even if the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, the trademark in the Application is a trademark by which consumers can recognize the goods relating to the business of the Appellant though use, and thereby, the trademark in the Application can be registered according to the provision of Article 3(2). In addition, the Appellant submitted Evidence A No. 10 to A No. 108 as means of evidence. Therefore, whether or not the trademark in the Application meets the requirements provided in Article 3(2) will be discussed below with reference to the above decision.

B About use of the trademark

(A) About similarity between the trademarks

The trademark in the Application consists of the standard characters "ステーキしょうゆ" that are horizontally written in series.

Whereas, on the container of the product of this case, since the start of the release in September 1994, as indicated in Attachment 2, a label is attached in which there are displayed the mark in which the characters "ステーキ" and the characters "しょうゆ" are vertically written in two lines in a brush style font (arrangement in which the head of "しょうゆ" starts from around between "ス" and "テ" of "ステーキ" on the upper right of "しょうゆ," and "しょうゆ" is indented and written in a different line, hereinafter, referred to as "used trademark") and the mark that may be recognized to represent the source of goods (mark consisting of characters of "キッコーマン", mark consisting of so-called goodwill mark in which character "萬" is arranged in testudinal shape (hereinafter, referred to as "Appellant's goodwill mark"), or the like) (A No. 12 and

A No. 18).

Thereafter, for example, as indicated in Attachments 3 to 5, regarding the product of this case, designs of product packages or the like have changed. However, on the label of the product, as in the product at the time of the release, there are displayed the used trademark in which the characters "ステーキ" and the characters "しょうゆ" are vertically written in two lines in a brush style font and the mark that may be recognized to represent the source of goods (mark consisting of characters "キッコーマン" or characters "kikkoman", Appellant's goodwill mark, or the like) (Evidence A No. 16, A No. 26, A No. 27, A No. 34, A No. 41, A No. 46, A No. 49, A No. 50, A No. 77, A No. 81, A No. 90, or the like).

Then, even if the constituent characters of the trademark in the Application match the constituent characters of the used trademark, the trademark in the Application and the used trademark are substantially different from each other in terms of appearance. Even if no consideration is given to whether or not the mark that may be recognized to represent the source of goods exists, it cannot be said that the use of the used trademark is substantially regarded as the use of the trademark in the Application.

(B) About similarity between the products

The product which is sold and to which the used trademark is applied by the Appellant includes steak sauce using "whole soybeans" as its ingredients (Evidence A No. 12) and meat-dedicated spices using "powder soy sauce" as its ingredients (Evidence A No. 90). Therefore, it can be said that these are the same as the designated goods of the present application "steak sauce to which soy sauce is added and steak spice to which soy sauce is added".

C About the fact relating to the trademark used condition

(A) Use start time and use period

The product of this case sold by the Appellant is a product released in September 1994 as seasoning dedicated to meat dishes "キッコーマン・ステーキしょうゆ" (three types including "garlic taste", "coarsely ground meat", and "onion taste") (Evidence A No. 12, A No. 15, and A No. 17 to A No. 19). Thereafter, regarding the product of this case, taste types (type) were added (Evidence A No. 19 and A No. 24 to A No. 27), professional-style products were released (Evidence A No. 23), and in addition, powder type products were added (Evidence A No. 90 to A No. 92, A No. 98, and A No. 99). In this way, the product of this case has been continuously manufactured and sold (Evidence A No. 12, A No. 16, A No. 18, A No. 26, A No. 27, A No. 34, A No. 41, A No. 46, A No. 49, A No. 50, A No. 52 to A No. 55, A No. 58, A No. 59, A No. 68, A No. 69, A No. 71, A No. 74, A No. 77, A No. 80, A No. 81, A No. 90 to A No. 94, A No. 96

to A No. 99, A No. 103, and A No. 106).

Then, it can be said that the Appellant has sold the product using the used trademark for 26 years.

(B) Sales volume, market share, or the like of the product

It is assumed that the sales volume of the product of this case have reached about four hundred thousand cases in 1995, which is the year following the start of sales and the annual sales price have exceeded one billion yen (Evidence A No. 19 and A No. 20).

Furthermore, in the "sales conditions of beef corresponding products for each manufacturer", regarding the products in the section of "steak sauce", it seems that the value of "Kikkoman" was the highest from 2013 to 2016 (Evidence A No. 35 to A No. 37).

Moreover, according to the investigation result using the database of INTAGE Inc. (investigation target item: seasoning for beef (steak sauce)), the value and the amount of "Kikkoman" were the highest across Japan and in the capital area in the period from April 1, 2012 to March 31, 2017 (Evidence A No. 38). According to "steak sauce market scale monthly transition (across Japan) (in value terms)" similarly using the database of INTAGE Inc., it is assumed that the value of "Kikkoman" was the highest in the period from 2017 to 2019 (however, in 2019, only value in January is counted) (Evidence A No. 102).

Note that it seems that the products of this case were on display in supermarkets or the like in Hokkaido (Sapporo-shi and Ishikari-shi), Saitama (Fujimino-shi), Tokyo (Machida-shi), Kanagawa (Yokohama-shi and Fujisawa-shi), Aichi (Nagoya-shi, Owariasahi-shi, Obu-shi, Okazaki-shi, and Gamagori-shi), and Hyogo (Nishinomiya-shi) in an unknown period (Evidence A No. 57). It seems that the products of this case were sold via mail order through "Rakuten ichiba" and "Amazon.co.jp" in March 2018 (Evidence A No. 58 and A No. 59).

(C) The method, period, area, and scale of advertisements or the like

a TV commercials

For the product of this case, the Appellant produced TV commercials referred to as "Woman having an insight version" in 1994 at the time of the release, "Concert version" in 1995, and "Dice version" in 1996 (Evidence A No. 18). It seems that these TV commercials were broadcasted on TV stations in the Kanto area (Nippon Television Network Corporation, TOKYO BROADCASTING SYSTEM TELEVISION, INC., Fuji Television Network, Inc., and TV Asahi Corporation), TV stations in the Kansai area (MAINICHI BROADCASTING SYSTEM, INC., Asahi Television Broadcasting

Corporation, Kansai Television Co. Ltd., and YOMIURI TELECASTING CORPORATION), and TV stations in the Nagoya area (TOKAI TELEVISION BROADCASTING CO., LTD., CBC TELEVISION CO.,LTD., Nagoya Broadcasting Network, and CHUKYO TV. BROADCASTING CO., LTD.) in the period from 1994 to 1996 (Evidence A No. 105). Then, it is acknowledged that an image of the label portion of the product of this case and an image of the product of this case are included as a part of the content of the TV commercials (Evidence A No. 106).

However, these TV commercials were produced more than 20 years before the appeal decision, and no evidence indicating that the Appellant produced TV commercials for the product of this case in 1997 and later was submitted.

b Campaigns or the like

It seems that the Appellant conducted campaigns for giving steaks, large plates, games, pendants, gift cards, or the like to consumers of the product of this case or the like around August 1997, around June 1998, around July to September 2005, around May 2012, around September 2013, around August 2015, around November 2016 to February 2017, around February 2018, November 2018 to January 2019, and October 2019 to January 2020 and conducted tie-up promotions in a shopping center in Osaka in June 2009 and a specialized store mall in Tokyo in February 2016.

Among these, it seems that the total number of applicants of the campaign conducted from November 2016 to around February 2017 was 20,808. It seems that the total number of applicants of the campaign conducted in November 2018 to January 2019 was 6,299, and the total number of applicants of the campaign conducted from October 2019 to January 2020 was 4,110 (Evidence A No. 39 to A No. 48 and A No. 84 to A No. 87).

D Questionnaire investigation

(A) The Appellant requested INTAGE Inc. and conducted "the investigation regarding word marks" from April 2, 2020 to April 6, 2020 as follows. This investigation was conducted as an Internet investigation, and the targets of the investigation were males and females of 16 to 69 years of age. The number of counting targets of the investigation was 1,071. Furthermore, people who work for "media and advertisement, newspaper and broadcasting/market investigation" and "manufacturers of soy sauce and sauce among foods" and their family members were excluded from the investigation targets. Note that, in the system, it was impossible to return to the previous question and answer the question (Evidence A No. 108).

(B) Specific content of the above investigation first, in Q4, presented the trademark in the Application to the respondents and asked, "Please look at this product name and answer

the names of manufacturers and companies that come to your mind" (open question).

Regarding the answer results, 36.0% of people answered "Kikkoman", and the remaining 64% of the respondents answered "EBARA", "Ikinari!STEAK", "AJINOMOTO", "YAMASA", "Moranbong", "Mizkan", "Nihon Shokken", or the like. (C) Next, as Q6, the trademark in the Application was presented to the respondents, and the question "Please choose the manufacturer of this product" was asked. The names of 22 companies including "Kikkoman/YAMASA CORPORATION/ SHODA SHOYU/Higeta Shoyu.../EBARA FOODS/Nihon Shokken/Moranbong.../KAGOME/Bull-Dog Sauce/Others: Specific name (...)" and a free answer field were presented as options.

Regarding the answer results, 41.2% of people answered "Kikkoman", and the most common answer of the remaining 58.8% of the respondents was "other".

E Introduction by third parties

(A) TV programs, newspapers, or the like

In a midnight TV program called "Liquid gourmet variety Tare" broadcasted by TV TOKYO Corporation on July 18, 2017, a scene in which the product of this case (assumed as professional-style product) is imaged was shown on the TV screen, together with telops "First tare (sauce) meeting 'Which tare fits well with grilled meat?' and 'Izyuin's favorite tare/Kikkoman/steak soy sauce onion taste'" (Evidence A No. 51, A No. 88, and A No. 89).

Furthermore, an article that introduces the product of this case (assumed as professional-style product) was placed in the free magazine "素材のちから (sozainochikara)" issued around autumn in 2016 (Vol. 23 Autumn 2016) (Evidence A No. 16).

In addition, it is acknowledged that, when the product of this case called "Kikkoman steak soy sauce truffle & porcini taste" was newly released on August 21, 2017 and the product of this case called "Kikkoman steak soy sauce powder soy sauce & spice" was newly released on August 19, 2019, product introduction articles were placed in newspapers and web articles in periods before and after the above release dates (Evidence A No. 49, A No. 50, A No. 52 to A No. 54, A No. 56, A No. 91 to A No. 94, and A No. 96 to A No. 99).

(B) Blog posts

Evidence A No. 60 to A No. 76 are blog posts in which persons who purchased the products of this case described the way the person purchased the product of this case, gave their impression of the use of the product of this case, or the like. When the product was introduced in the content of the blog, it is acknowledged that the description was

made so that the characters "Kikkoman" are basically perceived and understood as the characters expressing the source of goods, for example, "キッコーマンの'ステーキしょうゆ'" (Evidence A No. 61), "キッコーマンステーキしょうゆ" (Evidence A No. 67), and "キッコーマン ステーキしょうゆ" (Evidence A No. 62, A No. 63, A No. 66, A No. 68, A No. 69, A No. 71, A No. 72, and A No. 74).

(C) Posting on social network services (SNS)

The Appellant submitted twitter and Instagram posts with the hashtag "ステーキしょうゆ (steak soy sauce)" as an evidence indicating that the characters "ステーキしょうゆ" alone are widely recognized by consumers as the characters indicating the product of this case (Evidence A No. 100 and A No. 101).

However, the number of twitter posts was only about 20 (as of February 14, 2020), and it seems that the hashtag "キッコーマン" is written together in 60% or more of the posts.

Furthermore, it seems that the hashtags "キッコーマン" (kikkoman and キッコウマン) are written together in about a half of 50 or more posted Instagram articles that have been submitted (as of February 14, 2020). In addition, in the posted articles in which the hashtag "キッコーマン" is not written, descriptions such as "コストコのステーキしょうゆ (steak soy sauce of Costco)" and "洋食屋さんのステーキ醤油 (steak soy sauce of restaurant)" were found, and it seems that the posts by consumers do not necessarily intend to refer to the product of this case.

F Whether or not characters the same as or similar to the trademark in the Application are used by business operators other than the Appellant and use conditions

As described in (1) above, there is a fact that a plurality of types of seasoning for steaks, called "ステーキ醤油 (steki shoyu; steak soy sauce)" using the soy sauce as its ingredients exist and are distributed as products handled by others.

G Determination

According to the above, it is acknowledged that the product of this case was released in September 1994 as seasoning dedicated to meat dishes, and thereafter, the taste types (types) were added, and the professional-style product was released, and accordingly, the product of this case has been continuously manufactured and sold for 26 years.

However, in a case where the used trademark in which the characters "ステーキ" and the characters of "しょうゆ" are vertically written in two lines and are written in a brush style font is compared with the trademark in the Application consisting of the standard characters "ステーキしょうゆ", the two trademarks are formed by combining the characters "ステーキ" and the characters "しょうゆ" in common. However, forms

such as fonts and arrangements are different from each other more than a little. Therefore, it is difficult to acknowledge that the used trademark is identical to the trademark in the Application.

Furthermore, although it is acknowledged that the TV commercials for the product of this case were produced since 1994, which is the time when the product of this case was released, to 1996, the period is short. In addition, no evidence was submitted that indicates that the Appellant produced the TV commercials for the product of this case in 1997 or later. The number of times of campaigns for giving presents to consumers of the product of this case or the like and the number of times of tie-up advertisements (promotions) with shopping centers or the like are not large.

Then, when a point is considered that the product of this case was introduced in the TV programs, newspapers, or the like, in many cases, the product of this case was only introduced when release of a new product of the product of this case was mainly announced.

In addition, although there are cases where the product of this case is described in blog posts and SNSs, it cannot be acknowledged, depending on its content, that the characters "ステーキしょうゆ" alone are widely recognized by consumers as the characters indicating the product manufactured and sold by the Appellant.

Then, regarding the questionnaire investigation, it cannot be said that the trademark in the Application is widely recognized by consumers according to the respondents and the response rate.

In addition, there is a fact that the plurality of types of seasoning for steaks, called "ステーキ醤油 (steki shoyu; steak soy sauce)" using the soy sauce as their ingredients exist and are distributed as products handled by others.

Therefore, even in consideration of the sales volume and the share of the product of this case alleged by the Appellant, 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 through use.

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

(3) Appellant's allegation

A The Appellant alleges that, although the trademark in the Application implies steak sauces and steak spices to which soy sauce is added that are the designated goods thereof, the trademark in the Application does not fall under a trademark that only simply represents the quality of the goods, and in addition, it cannot be said that only several use examples of products that are manufactured and sold in a specific area directly

display the quality of the goods to traders and consumers.

However, the fact that the plurality of types of seasoning for steaks, called "ステーキ醤油 (steki shoyu; steak soy sauce)" using soy sauce as their ingredients exist in the business field handling the designated goods of the present application causes traders and consumers to easily recognize the "seasoning (sauce and spice) for steaks to which soy sauce is added" in a case where traders and consumers come into contact with the characters of the trademark in the Application "ステーキしょうゆ" used for the goods "steak sauce to which soy sauce is added and steak spice to which soy sauce is added". However, it should be said that traders and consumers only recognize that the trademark in the Application represents the quality of the goods as described in (1) above.

Therefore, the Appellant's allegation described above cannot be accepted.

B The Appellant alleges that, although there are some "ステーキしょうゆ" trademarks, using the trademark in the Application, in which the characters "ステーキ" and the characters "しょうゆ" are written in two lines and written with the font written with a brush, the font of the used trademark and the font of the trademark in the Application are not greatly different from each other, and even if there is a case where the fonts and the writing styles of these trademarks are different from each other, the two trademarks can be considered identical in terms of appearance and do not lack similarity as a trademark.

However, in a case where only the standard characters are sought to be registered (Article 5(3) of the Trademark Act), it is natural that a specific constitution of the characters cannot be designated (refer to Article 12-2(2)(iii) in parentheses of the same Act). However, the constitution of the characters in this case is regarded as a constitution including the font of the standard characters (refer to Article 12-2(2)(iii) in parentheses of the same Act and Article 27(1)), and a range having similarity regarding the constitution of the characters is not particularly widened. Therefore, the Appellant's allegation indicating that the used trademark in which the characters with the font written with a brush are vertically written in two lines has similarity with the trademark in the Application consisting of the standard characters that are horizontally written cannot be accepted.

C The Appellant alleges that, in the "questionnaire investigation" described in D in (2) above, it is acknowledged that 54.2% of women in their forties to sixties (main consumers of seasoning) that occupy 47.5% of the investigation targets recalled the Appellant from the trademark in the Application, and 44.3% of the above answered "Kikkoman" in the open question in Q4.

However, consumers of the designated goods of the present application "steak

sauce to which soy sauce is added and steak spice to which soy sauce is added" are not limited to women in their forties to sixties and are set to be "ordinary people widely including consumers, users, latent consumers, purchasing and sales personnel, employees of shops of 'soy sauce, sauce, or the like'" (Evidence A No. 108, p. 3) as indicated in "population (consumers)" set in the questionnaire investigation. The applicability of the trademark in the Application to Article 3(2) of the Trademark Act should be discussed as including the recognition by general consumers. Therefore, it can be said that consumers are intentionally limited as the premise of the Appellant's allegation.

Moreover, the breakdown of 54.2% alleged by the Appellant is as follows. The rate (54.2%) is obtained by setting 334 women in their forties to sixties among the investigation targets as a denominator and setting as a numerator a total of 181 women, including 148 women who answered "Kikkoman" to the open question in Q4 and 33 women who incorrectly answered in Q4 and selected "Kikkoman" from the options in Q6. Although the Appellant alleged the rate of the respondents who recalled "Kikkoman" in one of Q4 and Q6, even if consumers are limited, only about a half of the respondents recalled the relationship with the Appellant from the trademark in the Application. Therefore, it can be said that the remaining about half of the respondents recall a relationship with a company other than the Appellant or cannot recognize a specific source.

Therefore, the above allegation of the Plaintiff cannot be accepted.

(4) Summary

As described above, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and does not meet the requirements provided in Article 3(2) of the same Act. Therefore, the trademark in the Application cannot be registered.

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

September 8, 2020

Chief administrative judge: HANDA, Masato

Administrative judge: OMORI, Tomoko

Administrative judge: ISHIZUKA, Rie

Attachment

1 Examples of "steak soy sauce" in the field of seasoning indicted in the inquiry dated on February 3, 2020

(1) On the website of "Ise Syoyu Honpo", under the headline "steak soy sauce 200 ml", it is described that "Ise syoyu" dedicated to Ise Jingu is used, and wine is also used for this fine flavored soy sauce. This soy sauce can be poured on steaks, and you can serve it with grated radish and wasabi". In addition, there is placed an image of a product with a label on which a mark including characters "ステーキ" and characters "醤油" vertically written in two lines and a mark that may be recognized to represent the source of goods (including characters of "Ise Shoyu" or the like) are displayed.

(<https://www.isesyoyu.co.jp/products/detail/91>)

(2) On the website of "Marushou zyouzou", under the headline "steak soy sauce of restaurant 150 ml bottle", it is described that "This sauce is made mainly by using naturally brewed soy sauce and onions supervised by the restaurant 'Higejii' directly managed by a vegetable farmer in Shinsyu". In addition, there is placed an image of a product with a label in which a mark in which characters "洋食家さんの", characters "ステーキ", and characters "醤油" are vertically written in three lines (in its configuration, the color of the characters "洋食家さんの" is yellow, and the color of other characters is white) and a mark that may be recognized to represent the source of goods (so-called goodwill mark in which character "正" is arranged in circle or the like) are displayed.

(https://www.mi-so.com/shop/products/detail.php?product_id=188)

(3) On the website of "Kawanaka shouyu", under the headline "Steak soy sauce using Kiriri wine 180 ml", it is described that "This robust soy sauce has a mild sweet flavor and is made of '天然かけ醤油 (natural soy sauce to be poured) made by Kawanaka shouyu and 'Kiriri wine red' made by HIROSHIMA MIYOSHI WINERY". In addition, there is placed an image of a product with a label on which a mark in which characters "ステーキ", characters "醤油", and characters "霧里ワイン使用" are vertically written in three lines and a mark that may be recognized to represent the source of goods (consisting of characters "川中醤油" or the like) are displayed.

(<http://www.kawanaka-shouyu.net/shopdetail/000000000211/>)

(4) On the website of "Nakayama farm shop", under the headline "Nakayama farm original steak soy sauce 150 ml", it is described that "Organic soy sauce that brings out the flavor of the materials is blended with a robust wine and garlic". In addition, there is placed an image of a product with a label on which a mark in which characters "ステーキ" and characters "醤油 (with Japanese pronunciation "Shoyu") are horizontally written in two lines and a mark that may be recognized to represent the source of goods

(consisting of characters "なかやま牧場" or the like) are displayed.

(https://www2.enekoshop.jp/shop/nakayama-farm/item_detail?category_id=0&item_id=1912939)

(5) On the website of "GARDEN PANA online shop", under the headline "New release! Uchina steak soy sauce", it is described "Enjoy delicious steak soy sauce! This is spicy and rich soy sauce perfect for Okinawa steaks". In addition, there is placed an image of a product with a label on which a mark in which characters "うちなー", characters "ステーキ", and characters "醤油" (characters respectively have colors of white, gold, and red) are vertically written in three lines and a mark that may be recognized to represent the source of goods (consisting of characters "GARDEN PANA" or the like) are displayed. (<https://www.gardenpana.biz/SHOP/833872/1008014/list.html>)

(6) On the website of "GARDEN PANA online shop", under the headline "Ishigaki steak soy sauce [180 ml]", it is described "This is spicy and rich soy sauce perfect for Okinawa steaks". In addition, there is placed an image of a product with a label on which a mark in which characters "石垣島" and characters "ステーキ醤油" are vertically written in two lines and a mark that may be recognized to represent the source of goods (consisting of characters "GARDEN PANA" or the like) are displayed. (<https://www.gardenpana.biz/SHOP/1401.html>)

2 Evidence A No. 18



3 Evidence A No. 41 (use form in 2005)



4 Evidence A No. 46 (use form relating to professional-style product in 2016)



5 Evidence A No. 49 (use form in 2017)

