

Advisory opinion

Advisory opinion No. 2019-600030

Demandant Miyazaki Prefecture JA Juice Co., Ltd.

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Patent Attorney Imanaka, Takayuki

Demandee Kotobuki Seika Co., Ltd

The case of the advisory opinion on Trademark Registration No. 2288027 between the parties above is stated and concluded as follows.

Conclusion

Mark A used for the goods "confectionery, bread and buns" does not belong to the range of the effect of Trademark Registration No. 2288027.

Reason

No. 1 The Trademark

Trademark Registration No. 2288027 (hereinafter, referred to as the "Trademark") consists of vertically written characters of "日向夏" ("Hyuganatsu; Citrus tamurana)" as indicated in the attachment. The registration application was filed on February 18, 1988, and the trademark was registered on December 26, 1990 with designated goods of Class 30 which are as specified in the Trademark Registry. Thereafter, the designated goods' reclassification was registered on March 13, 2002 to set the designated goods to "Confectionery, bread and buns" of Class 30.

No. 2 The mark A

A mark (hereinafter, referred to as "Mark A") used for the goods "confectionery, bread and buns" by the Demandant consists of Chinese characters "日向夏" that are horizontally written.

No. 3 The Demandant's allegation

The Demandant requested an advisory opinion whose content is the same as the

conclusion, summarized grounds for the request as follows, and submitted Evidence A No. 1 to Evidence A No. 7 as means of evidence.

1 Necessity of a request for an advisory opinion

"日向夏 ("Hyuganatsu; Citrus tamurana)" was discovered in the Edo era and is known as one of typical citrus fruits produced in Miyazaki. The name of the so-called citrus fruit "日向夏 ("Hyuganatsu; Citrus tamurana)" is used as a common name, and "日向夏 ("Hyuganatsu; Citrus tamurana)" is used as ingredients of various foods including confectionery and bread and buns.

The Demandee acquired the trademark right for the trademark "日向夏 ("Hyuganatsu; Citrus tamurana)" with the designated goods "confectionery, bread and buns" around 1991. Thereafter, when customers of the Demandant have manufactured and sold goods using Citrus tamurana as ingredients, the Demandee has issued a warning indicating that the customers violate the trademark right.

Therefore, because the customers of the Demandant cannot use the mark A for "confectionery, bread and buns" with no fear, the request for advisory opinion was submitted.

2 Description of the mark A

As described in No. 2 above.

3 Description regarding that the mark A does not belong to the range of the effect of the trademark right

(1) "日向夏 ("Hyuganatsu; Citrus tamurana)" is a common name

"日向夏 ("Hyuganatsu; Citrus tamurana)" is a common name of a citrus fruit.

"日向夏 ("Hyuganatsu; Citrus tamurana)" is a citrus fruit produced in Miyazaki, Shizuoka, Kochi, or the like (Evidence A No. 1).

Furthermore, Japan standard commodity classification (revised in March 1955) issued by Administrative Management Agency at that time has already described "Hyuganatsu (日向夏なつみかん)" in "Major group 04 - Crude vegetable products, edible" (Evidence A No. 2). As is well known, Japan standard commodity classification described above indicates general names used in transactions in Japan, and it is obvious that the name described in this commodity classification is a common name.

Moreover, the name of "日向夏 ("Hyuganatsu; Citrus tamurana)" was used in market in the postwar period from 1965 to 1974 (Evidence A No. 3), and it can be said that "日向夏 ("Hyuganatsu; Citrus tamurana)" was recognized as a common name in the period from 1965 to 1974 at the latest.

According to the above, the name "日向夏 ("Hyuganatsu; Citrus tamurana)" is

recognized as a common name, and for example, foods using Citrus tamurana as ingredients are generally distributed (Evidence A No. 4).

(2) Mark A only displays the ingredients of "confectionery and bread and buns" in a common way

A Regarding "confectionery"

Mark A only displays the ingredients of "confectionery".

Specifically, there are many cases where confectioneries such as puddings and cookies using Citrus tamurana are sold (Evidence A No. 4), and in many cases fruit juice of Citrus tamurana is used for these confectioneries as an ingredient of the goods.

B Regarding "bread and buns"

Mark A only displays the ingredients of "bread and buns".

There are cases where Japanese major bread makers sell bread using Citrus tamurana. Many bread products on which "日向夏" are written (Evidence A No. 5) are found using Internet search engines, and Citrus tamurana is used as an ingredient of these products. In addition, recipes using Citrus tamurana are introduced (Evidence A No. 6).

C Summary

As described above, because Mark A displays the ingredients of "confectionery and bread and buns" in a common way, it is obvious that Mark A falls under Article 26(1)(ii) of the Trademark Act and does not belong to the range of the effect of the trademark right of the Trademark.

No. 4 The Demandee's reply

The Demandee does not reply against the Demandant's allegation in No. 3 above.

No. 5 Judgment by the body

1 Regarding Mark A

Mark A consists of Chinese characters of "日向夏" ("Hyuganatsu; Citrus tamurana)" that are horizontally written as described in No. 2 above, and a form of the character does not have characteristics in its font. Therefore, Mark A displays "日向夏" ("Hyuganatsu; Citrus tamurana)" in a common way.

Then, the characters of "日向夏" ("Hyuganatsu; Citrus tamurana)" indicate a common name of a citrus fruit (Evidence A No. 1 to Evidence A No. 3), and 日向夏 ("Hyuganatsu; Citrus tamurana) is used as an ingredient of the products "confectionery and bread and buns" (Evidence A No. 4 to Evidence A No. 6).

Then, it can be said that traders and consumers coming into contact with Mark A consisting of the characters of "日向夏" ("Hyuganatsu; Citrus tamurana)" used for the

products "confectionery and bread and buns" easily understand and recognize that Mark A represents a "product using Citrus tamurana as its ingredient".

Therefore, because Mark A displays an ingredient of the designated goods "Confectionery and bread and buns." of the Trademark in a common way, it should be said that Mark A is a trademark (mark) that falls under Article 26(1)(ii) of the Trademark Act.

2 Summary

As described above, because Mark A used for the products "confectionery and bread and buns" falls under Article 26(1)(ii) of the Trademark Act, Mark A does not belong to the range of the effect of the trademark right of the Trademark.

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

June 2, 2020

Chief administrative judge:	HANDA, Masato
Administrative judge:	HIRASAWA, Yoshiyuki
Administrative judge:	OMORI, Tomoko

Attachment (the Trademark)

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