

## Latest Court Decisions

2010:

[June]

### ● "Bio" Form Case (Cancellation Case of Trial Decision)

IP High Court 2010.6.28 H21(Gyo-Ke)10385

A Cancellation Trial for non-use was filed against the trademark "Bio" in English and katakana (right) specifying "artificial tooth" in Class 10. However, the Petition for Trial was dismissed. Then, the Petitioner filed the cancellation suit of the Trial Decision.



The trademark proprietor (= defendant) is the manufacturer of artificial tooth, established in 1922. There are four forms of artificial tooth, ① Regular form, ② **Bio form**, ③ Harmony form and ④ NC Varacia form. The defendant (= trademark proprietor) developed ② Bio form and they are using the indication 【 "Bio" form 】 on the packaging boxes of their goods.

The plaintiff insisted as the cancellation reasons as follows.

- (1) The trademark in use 【 "Bio" form 】 could not be regarded as use of the registered trademark "Bio" in English and katakana.
- (2) The indication 【 "Bio" form 】 was written in rather small size in comparison with the indication "ACRYLIC RESIN TEETH" written in a big size.
- (3) The indication 【 "Bio" form 】 merely showed one type of forms of the artificial tooth.
- (4) There was no trademark indication such as ®.

However, the IP High Court also dismissed the plaintiff's claims saying that Bio form was developed by the defendant and that the word "Bio" was used as a trademark by being stressed surrounding it by the double quotation marks.

### ● e-watching Case (Cancellation Case of Trial Decision)

IP High Court 2010.6.28 H21(Gyo-Ke)10409

An application for the trademark "e-watching" (right upper) specifying electric and electronic machines in Class 9 was rejected by the cited trademark "WATCHING" (right lower). Then, the applicant filed the cancellation suit of the Trial Decision.



However, the IP High Court also rejected the application with the following reasons.

- (1) The letter "e" is being used as an abbreviation of "electric" in the electric and electronic industry.
- (2) The letter "e-" is being used as the meaning of "electronic" and "via internet".
- (3) The letter "e-" is being used also as the meaning of "ecology".
- (4) Therefore, the part "e-" does not have distinctiveness as a trademark and the main part of the applied-for trademark "e-watching" is "watching" that is similar to the cited trademark.

● **Jo-Ju Case (Cancellation Case of Trial Decision)**

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**IP High Court 2010.6.30 H22(Gyo-Ke)10076**

An Invalidation Trial was filed against the registered trademark "**Jo-Ju**" (right) specifying "cosmetics" in Class 3 on the basis of the prior registered trademarks such as "**JAWS**", "**JOWS**" and "**JUJU**". The petitioner is a Japanese cosmetic company, JUJU COSMETICS CO. LTD.

Jo-Ju

Since the Petition for Invalidation Trial was dismissed by the JPO, the petitioner filed the cancellation suit of the Trial Decision.

However, the IP High Court also dismissed the plaintiff's claims because the subject trademark "Jo-Ju" was not confusingly similar to the cited trademarks "JAWS", "JOWS" and "JUJU" in the pronunciations, appearances and meanings.