

Latest Court Decisions

2011:
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● Quick Look Case (Damage Suit)

Tokyo District Court 2011.5.16 H22(wa)18759

The trademark proprietor (plaintiff) of the registered trademark "Quick Look (design)" (right upper) specifying "electronic machines, apparatus and their parts" etc. in Class 9 filed a damage suit as the trademark infringement against Apple Japan KK (defendant) who used the words "Quick Look" (right lower) with respect to OS software products.



However, the Court dismissed the plaintiff's demand with the following reasons.

- (1) The words "Quick" and "Look" respectively mean "moving fast" and "to see" and they were used as "a quick look" and "have a quick look" in English.
- (2) The defendant's mark was used to indicate the function of the OS software that quickly previewed the contents of the files of the PCs without opening up the files. The defendant's mark was widely known by the users and customers of the defendant's computers.
- (3) The defendant's trademark was "Mac OS X" that indicated the origin of the defendant's software products.
- (4) Therefore, the defendant's mark was not used as a trademark and there was no trademark infringement.

We have some questions on the Court decision. We can understand the meaning of "Quick Look" as indicated by the Court. However, "Quick Look" had not been used in the IP industry in Japan when the plaintiff's trademark was registered. This means that the plaintiff's trademark had the distinctiveness as a trademark.

In addition, "QUICKLOOK" was registered at the USPTO in the name of Hewlett-Packard Development Company under No. 3457817 as of July 1, 2008 for "software for accessing email, calendar, task and contact information while computer is on standby, hibernation or off" in Class 9.

Therefore, we assume that if the plaintiff's trademark did not exist, HP or Apple would have filed an application for the trademark "Quick Look". However, the plaintiff's trademark registration did exist, Apple Inc filed an opposition and HP filed an Invalidation Trial against the plaintiff's trademark for the safe use of "Quick Look" for their computers.

It is said in Japan that when judging about the distinctiveness, the monopoly adaptability should be considered. This means that it should be considered whether or not the other manufacturers or traders may have options to use other trademarks than the registered trademark, even if the trademark is registered by one party and is exclusively used only by the trademark proprietor.

If there is no option for the manufacturers or traders to use the other trademarks than the registered trademark, such the trademark should not be registered and should not be exclusively used by the specific party.

In the subject case, we believe that the other trademarks such as "Quick See", "Quick Check", "Quick View", "Speed Look" and "Fast Look" can be used for the same or similar PC function even if the trademark "Quick Look" was registered by the plaintiff.

Therefore, the trademark "Quick Look" can be exclusively used by the plaintiff as the effective trademark registration.

In the subject case, the defendant was Apple Japan KK. The plaintiff also filed the damage suit against Nippon Hewlett-Packard K.K. The Court Decision to HP was issued on June 29, 2011 by the Tokyo District Court to the same effect as the subject case.