

Latest Court Decisions

2013:

[March]

- **VICTOIRE Case** (Cancellation Suit of Trial Decision)

IP High Court 2013.3.14 H24(Gyo-Ke)10325

A cancellation trial for non-use against the registered trademark "VICTOIRE" for liquors in Class 33 was dismissed because the registered trademark was used for "wine".

The trademark in use was that the words "VICTOIRE" and "BOX" were written in two lines and the words "VICTOIRE" and "BOX" in katakana letters were also written in two lines on the wine label, as shown on the right.

Therefore, the point at issue was whether the trademark in use could be regarded as identical to the registered trademark or not.



The IP High Court admitted the Trial Decision because the goods of the defendant (trademark proprietor) were wines contained in paper boxes and that such wines were called "box wine" and "box type".

Therefore, the words "BOX" in English and katakana on the label should be considered as descriptive of goods and the main part as a trademark on the label was "Victoire" that was identical to the registered trademark.

- **Augusta Club Case** (Cancellation Suit of Trial Decision)

IP High Court 2013.3.21 H24(Gyo-Ke)10363

The trademark registration for "Augusta Club (with device)" specifying the services regarding golf in Classes 35, 41 and 43 was invalidated by an invalidation trial filed by Augusta National Inc. Then, the trademark proprietor (plaintiff) filed the cancellation suit before the IP High Court.



The Court sustained the trial decision because the trademark "Augusta Club" reminded people of a name of an organization, a bar or a place of entertainment concerning golf. On the other hand, the defendant, Augusta National Inc., was world-widely well known by "Augusta Masters Golf Tournament". Therefore, the subject trademark was liable to cause confusion with the defendant as if the plaintiff had any business relationship with the defendant in view of the common customers (Article 4-1-15 of the Trademark Law).

- **Rhythm Case** (Cancellation Suit of Trial Decision)

IP High Court 2013.3.21 H24(Gyo-Ke)10382

The registered trademark "rhythm" specifying "footwear" in Class 25 was cancelled by the cancellation trial for non-use.

r h y t h m

The trademarks in use submitted by the plaintiff (trademark proprietor) were "NEO RHYTHM" in two words and "NEORHYTHM" in one word.

NEO RHYTHM

NEORHYTHM

You will see that "NEO" means "new" and that the parts "NEO" and "RHYTHM" in the trademarks in use were written in different fonts. Therefore, people could see the "RHYTHM" part independently from the trademarks in use as a whole.

However, the IP High Court did not admit that the trademarks in use were identical to the registered trademark because the plaintiff also registered trademarks "neorhythm" and "neo rhythm" in plain letters in English and they also used the katakana letters equivalent to "NEORHYTHM" as the pronunciation of these trademarks.