

Latest Court Decisions

2015:

[January]

- JAS Case (Cancellation Suit of Trial Decision)

IP High Court 2015.1.29 H25(Gyo-Ke)10294,10295

[SUMMARY/INTRODUCTION]

Japan Air System Co., Ltd. was a Japanese airline company and their trademarks were "JAS" (word) and "JAS" (logo) that were registered in 1995 in Class 39 for air transport services and others.



JAS was established in 1971 and was absorbed in 2006 by **Japan Airlines Co., Ltd. (JAL)** and the JAS trademarks were no longer used for their airline services. However, the registrations for the JAS trademarks are still in force in the name of JAL.



JAPAN AIRLINES

Under the situation, the cancellation trials for non-use were filed in 2012 against the JAS trademarks for all services in Class 39 by a Luxembourgish corporation, **JAS Worldwide S.a.r.l.** However, the JAS logo in blue appeared on the side of air cargo containers. What were the trial decisions and the IP High Court decisions?

[Case]

The Plaintiff, JAS Worldwide S.a.r.l., filed the cancellation trials for non-use against the JAS trademarks in the name of Japan Airlines Co., Ltd., the Defendant, alleging no use of the trademarks in the last three years (Article 50 of the TM Law).

The Defendant submitted as proof of use the photographs taken at Haneda International Airport, from which the stylized word trademark "JAS" in blue appearing on the side of the air cargo containers could be seen. The air cargo containers contained passenger luggage as well as other cargos and were transported by the JAL airplanes.

The point at issue was as to whether or not the air cargo containers on which the JAS trademark appeared could be considered as use of the trademark for the airline services in Class 39 as registered.

The related provisions in the Japanese Trademark Law are Articles 2-3-3 ~ 2-3-5 that are as follows.

Article 2 (3):

"Use" with respect to a mark as used in this Law means any of the following acts:

- ③ in the course of the provision of services, to affix a mark to **articles to be used by a person who receives the said services** (including articles to be assigned or loaned; the same shall apply hereinafter);
- ④ in the course of the provision of services, to provide the said services by using **articles to which a mark is affixed and which are to be used by a person who receives the said services**;
- ⑤ for the purpose of providing services, to **display articles to be used for the provision of the services** (including **articles to be used by a person who receives the services** in the course of the provision of services; the same shall apply hereinafter) to which a mark is affixed;

The Defendant alleged that the use of the JAS trademark on the air cargo containers should be regarded as use for the airline services in Class 39 as provided in to Article 2-3.

The JPO dismissed the Plaintiff's petition for cancellation by accepting the Defendant's allegations. Then, the Plaintiff filed the cancellation suit with the IP High Court.

The Plaintiff stated as the cancellation reasons as follows.

- (1) The air cargo containers were not the articles to be used by a person who received the airline services as provided in Articles 2-3-3 and 2-3-4 because the airline passengers simply left their luggage at reception and did not put the luggage in the air cargo containers by themselves.
- (2) The containers were not displayed for the purpose of airline services as provided in Article 2-3-5.

However, the IP High Court dismissed the Plaintiff's allegation as follow.

- (1) The air cargo containers are articles as provided under Article 2-3-3 and 2-3-4 because the containers were used for containing luggage and cargos left by passengers and transport companies that received the airline services provided by the Defendant, JAL.
- (2) The air cargo containers bearing the JAS trademark could be seen by passenger and transport company people during moving in the airport as well as in the process of bringing in and out from airplanes. That was the display as provided under Article 2-3-5 of the Trademark Law.