

Latest Court Decisions

2019:

[January]

• **QR Code Case (Cancellation Suit)**

IP High Court 2019.1.29 H30(Gyo-Ke)10059

[SUMMARY/INTRODUCTION]

A Japanese corporation, K.K. Denso Wave, is a proprietor of the registered trademark "QR Code" in English and Katakana letters (right) for "electronic machines, apparatus, and their parts, etc." in Class 9.

QR コード
QR Code

A Japanese corporation, A·T Communications K.K., filed a cancellation trial for non-use against Denso Wave's trademark.

Denso Wave submitted a proof of use of the registered trademark for application software being used for traceability related services regarding food and industrial products. The JPO dismissed the cancellation petition accepting Denso Wave's proof of use.

A·T Comm. brought the case before the IP High Court demanding cancellation of the JPO's trial decision.

As known, "QR Code" is a kind of two-dimensional barcode invented by K.K. Denso in 1994. QR Code is a printed pattern that can be read by a camera of a smart phone to give information to the user of the phone. The right QR Code is for FUJIMarks Japan's URL.



The point of issue was as to whether the name of the barcode was a trademark or not. What was the Court decision ?

[Court Decision]

The Court also accepted the proof of use submitted by Denso Wave and dismissed the petition by A·T Comm.

Denso Wave submitted a general catalogue distributed at an exhibition. On page 78 of the catalogue, the words "Frame QR® Smartphone Reader/QR Code® Reader "Q"" as well as the QR icon with the words "QR Code" (right) (Used Trademark) were found.



In addition, on the same page the explanation "QR Code®Reader App for smartphone", the descriptions "Download (Free) from Here" and "App Store Google Play" and the QR Code label appeared. The Court admitted from these facts that the above Used Trademark was an advertisement of the application software.

As to whether the name of the barcode was used as a trademark or not, the Court judged it as use of the trademark from the flowing points of view while it might be regarded merely as a kind of two-dimensional codes.

- a) Denso Wave registered the code name "QR Code" as a trademark.
- b) Denso Wave displayed the description as "QR Code is a registered trademark of KK Denso Wave" with the trademark "QR Code".
- c) Denso Wave informed the public by attaching the indication "®" that "QR Code" was their registered trademark.

The Court further stated that Denso Wave had a business plan to provide services regarding traceability of food and industrial products utilizing the QR Code for smartphones. Users of such traceability services would have to download the application software for the QR Code in advance.

Even if such software would be downloaded with free of charge, Denso Wave would gain profits from their traceability services where their client provide the customers with product information through smartphone using QR Code. This was a kind of business models with payment.

This case seems very difficult. However, it can be understood that the trademark proprietor does not necessarily have to make a profit directly by use of the trademark for its specified goods/services. We hope that this case will be helpful for your future business in Japan.