


Court Decisions

2024:
[November]

●Shin-Godzilla 3D Mark Case (IP High Court)

October 30, 2024 / R6 (Gyo-Ke) 10047	
Parties	Plaintiff: Toho Co., Ltd. Defendant: Japan Patent Office
Mark	Applied for 3-Dimensional Mark  [Classes 28] Stuffed toys; action figures; other toys; dolls.
Conclusion	Distinctiveness acquired (Trademark Law 3-2)

Summary:

First, the characteristics related to the 3-dimensional shape of the trademark in question (such as the body shape, face, and head features common to the characters in the "Godzilla" movie series) are not essentially different from the features of three-dimensional shapes resembling dinosaurs or monsters generally seen in the public domain, and it cannot be recognized as exceeding the scope of the shape of the product related to the designated goods. Therefore, the subject 3-dimensional shape lacks distinctiveness as a trademark (Trademark Law § 3-1-3).

Next, although the direct object of "use" under § 3-2 of the Trademark Law is limited to the 3-dimensional shape of Shin-Godzilla related to the trademark in question, in determining whether "the consumers can recognize the goods as being from a certain business", it is not hindered in any way to consider the impact of the entire "Godzilla" movie series, followed by "Shin-Godzilla", on the consumer's recognition. Moreover, the 3-dimensional shape of Shin-Godzilla possesses all the aforementioned characteristics, and based on the commercial success of the movie, sales volume and sales amount of the products (the designated goods), and the results of surveys, etc., it was determined that as a result of its use on the designated goods, the general consumers, as the target of demand, came to recognize the goods as being from the plaintiff's business. Thus, it is judged to fall under § 3-2 of the Trademark Law (acquired distinctiveness).

Comment (supplementary explanation):
This case involves a judgment regarding the shape of the

		<p>designated goods themselves in the category of “stuffed toys; dolls” etc. in Class 28. In contrast, in different product and service categories such as Classes 9, 16, 25, 28, and 41, the 3-dimensional shape in question has already been registered without any issue regarding its distinctiveness (JP Reg. No. 6312530).</p>
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