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INFRINGEMENT OF TRADEMARK RIGHTS



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Trademarks, which have an important place among intellectual property rights, have become an essential element of the economic life. In the general sense, trademark is a sign able to distinguish the goods and services of a business from the goods and services of another. The increase of needs in the field of goods and services and the rise of the number of businesses make necessary the use of trademarks. Thus, the trademarks which distinguish the goods and services by showing differences among them become a “must” in business life.

In addition, trademarks contribute to the competition by connecting businesses and customers and orientating customers’ product preferences. Within the scope of competition, it is a well-known fact that businesses counterfeit preferred trademarks to exploit the customers’ trust on such trademarks. This situation is mostly encountered on the wrappings / package designs of products such as nutrients, medicines and personal cleaning products. For example; as a result of the eye tracking tests on package designs of “Komili” and “Palmolive” shampoo trademarks, it was determined that the selective perception was focused on the letter “M” and the emphasis on the letter “M”. Likewise, on the package designs of wafers Kitkat and Milktat, the red color and the wafer image were emphasized on the same spot. Nowadays, due to the widespread use of electronic commerce and Internet has become a determinant element of the economy and the industrial property right conflicts may also be seen in virtual platforms; the trademark infringements increased significantly.

In our daily life, you may realize that there is similar packaging on many products at the supermarket from paper towels to cheeses. No doubt, the main reason behind is to exploit the recognition of the trademarks. Due to new products designed by using similar name and packaging to a well-known trademark, businesses unfairly benefit from the trust that the trademark has gained by the customers over many years. In fact, many products are preferred because of the perception created by trademarks at the customers’ first glance. Therefore, the businesses holding registered trademarks must take required precautions to prevent unfair loss of customers. Hence, “infringements of trademark rights” arising from “trademark confusion” constitutes a large part of the judicial workload.

The dispute between the trademark owner and the businesses try to take advantage of the trademark confusion is actually a registration restraint. This also means the infringement of the trademark rights. In such case, the process may be quickly managed with minimum damage by means of alternative dispute resolution.

At this point, the institution liable to issue “the trademark registration certificate” recognizing the trademark rights should examine the registration applications carefully.

The trademark rights arising from registration are also protected within the relevant provisions of unfair competition. However, if the trademark registration application is rejected without adequate examination and on the abstractive basis of “trademark confusion”, free market economy and competitive environment may be damaged.

Certainly, the main purpose of the protection of the trademark is to prevent the unfair use of the customer portfolio and the reputation, which are achieved as a result of endless efforts. From a legal perspective, trademark rights prevent the use of the trademark without the permission of the trademark holder. By this means, the trademark is able to use exclusively and specifically by the holder. In our country, the infringement of the trademark rights is subject to both legal and penal sanctions. As of registration date you may use the trademark rights against those who damage or infringe your rights. Nonetheless, it should be noted that, the acquiescence in the event of such trademark infringements may result in loss of right in accordance with the decisions of the Supreme Court. Therefore, the trademark rights holders, especially legal entity businesses should work with the experts in the trademark law.

Answers. Not theories.

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