

(Translation)

Main Points for Determining a Well-known Trademark or Mark

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1. These Main Points are prescribed for the purpose of determining a well-known trademark or mark under Article 23-1(12) of the Trademark Act (hereinafter referred to as "this Act").

2. A well-known trademark or mark under this Act means one that has been well-recognized by the relevant businesses or consumers, for which objective evidence is shown.

3. The classification of relevant businesses or consumers shall be based on the scope of transaction of the goods or services on which the trademark or mark is used, including but not limited to the following three situations:

(1) actual and/ or potential consumers of the type of goods and/ or services to which the trademark or mark applies;

(2) persons involved in channels of distribution of the type of goods and/ or services to which the trademark or mark applies;

(3) relevant business operators circles dealing with the type of goods and/ or services to which the trademark or mark applies is .

4. A trademark or mark that has been well - recognized by at least any one of the relevant businesses or consumers listed in Main Point 3 shall be deemed a well-known trademark or mark.

5. In determining a well-known trademark or mark, the following factors must be considered on a case - by - case basis:

(1) the degree of knowledge or recognition of the mark in the relevant businesses

or consumers;

(2) the duration, extent and geographical scope area of the any use of the trademark or mark;

(3) the duration, extent and geographical scope area of the any promotion of the trademark or mark. The term "promotion" includes advertising or publicity and the presentation at fairs or exhibitions, at trade shows or exhibitions of the goods and/ or services on to which the trademark or mark applies;

(4) the duration and geographical area of any registration, and/or any application for registration, of the trademark or mark, to the extent that they reflect the usage or recognition of the trademark or mark;

(5) the record of successful enforcement of rights in the trademark or mark, in particular, the extent to which the mark was recognized as well-known by an administrative or judicial authority;

(6) the value associated with the mark;

(7) other factors sufficient to determine a well-known trademark or mark.

6. All the factors set forth in Main Point 5 shall be supported by the following evidence:

(1) invoices, marketing documents, import/export documents and sales figures for the goods and/ or services;

(2) advertisements in domestic or foreign mass media, such as newspapers, magazines or television;

(3) documents relating to the arrangement of the sales outlets, channels of trade or locations for the goods or services;

(4) appraisal of the trademark or mark in the market, ranking in the sales figures, ranking in the advertising expenditures;

(5) proofs showing the time when the trademark or mark was created and used

and proofs showing continued use of the trademark or mark;

(6) documents showing registrations of the trademark or mark in and/or outside Taiwan , including registrations made by an affiliate;

(7) relevant evidence or market survey reports issued by a credible organization;

(8) documents showing relevant recognition made by an administrative or judicial authority;

(9) any other proofs of the well-known status of the trademark or mark.

7. A well-known trademark or mark herein is not limited to one that has been registered, applied for registration, or one that is used in Taiwan .

8. The use of a trademark or mark is not limited to the use by the owner. Any use of the trademark or mark by the owner's affiliates or a third party may also be taken into account when considering factors set forth in Main Point 5.

9. The evidence of use of a trademark or mark should bear a representation of the trademark or mark and date(s), or be supported by materials that can be used to identify the trademark or mark used on, and the date(s) of, the evidence. Such evidence of use is not limited to domestic materials. However, in the case of foreign materials, the judgment must still be made based on the fact whether the trademark or mark is known to the relevant businesses or consumers in Taiwan .

10. Except common facts known to the public, the determination of a well-known trademark or mark shall be made by the competent authority based on the evidence set forth in Main Point 6, and by taking each of the factors set forth in Main Point 5 into consideration.

11. The owner of a trademark or mark is not required to present evidence to prove the well-known status of his or her trademark or mark if such well-known status has been proved and the trademark or mark has so been recognized as a well-known trademark . However, relevant evidence may still be required if it is necessary in the examination of a particular case.

12. These Main Points are applicable mutatis mutandis to certification marks,

collective marks, and collective trademarks.