

## 5. Law of Civil Procedure and Bankruptcy

### **Junction Produce Company v. Aqua Company**

Tokyo District Court, January 31, 2005

Case No. (*mo*) 858 of 2005

1889 HANREI JIHO 73; 1191 HANREI TAIMUZU 339

#### **Summary:**

A suit for the injunction (*sashitome*) of infringements of the trademark rights based on Article 36(1) of the Trademark Act corresponds to the suit prescribed by Article 5, Item 6 of the Code of Civil Procedure.

#### **Reference:**

Code of Civil Procedure, Art. 5, Item 6; Trademark Act, Art. 36(1).

#### **Facts:**

X is a company that has its headquarters in Osaka Prefecture, and Y is a limited company that has its headquarters in Kanagawa Prefecture. In this basic case, Y, who has the trademark rights, insists that X's use of this trademark violates Y's right and requests the injunction (*sashitome*) of X's use.

X requests the transfer decision that transfers this case to the Osaka District Court, because of the lack of jurisdiction (Code of Civil Procedure, Art. 16(1)).

#### **Opinion:**

*Dismissed.*

Article 5, Item 6 of the Code of Civil Procedure allows “a suit relating to a tort” to be filed before the court governing “the place of the tort,” considering the convenience of parties for establishment, and so on. Considering the meaning of this provision, and so on, it is appropriate that we should understand as follows: that this phrase of “a suit relating to a tort” means not only suits relating to torts prescribed by either of the items of the Code Civil, but also suits relating to claims for injunction (*sashitome*), which request the stop or prevention of infringe-

ments, filed by the person whose rights or interests are violated or may be violated (Supreme Court 1st P.B., April 8, 2004).

In addition, Article 36(1) of the Trademark Act provides that the person who has the trademark rights or their exclusive use can claim the stop or the prevention of the infringements against the person who violates or may violate his trademark rights or their exclusive use.

Considering that meaning of the provision of Article 5, Item 6 of the Code of Civil Procedure, a suit for the stop or the prevention of infringements of the trademark rights based on Article 36(1) of the Trademark Act corresponds to the suit prescribed by Article 5, Item 6 of the Code of Civil Procedure.

### **Editorial Note:**

We can think that this decision extends the judgment of the Supreme Court 1st P.B., April 8, 2004, which relates to the claim of an injunction (*sashitome*) based on Article 3(1) of the Unfair Competition Prevention Act, to the case of a suit for the injunction (*sashitome*) of infringements of the trademark rights prescribed by Article 5, Item 6 of the Code of Civil Procedure.

I guess this judgment may be applied to the cases for injunction (*sashitome*) relating to intellectual property in general.

## **6. Criminal Law and Procedure**

### **X v. Japan**

Supreme Court 1st P.B., April 14, 2005

Case No. (a) No. 1618 of 2004

59 (3) KEISHU 259

### **Summary:**

Articles 157-3 and 157-4 of the Code of Criminal Procedure are not in violation of Article 82(1), and of Paragraph 1 and the first sentence of Paragraph 2 of Article 37 of the Constitution.