

# Acquired Distinctiveness through Use regarding Three Dimensional Trademarks



Korean Intellectual  
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# Three Dimensional Trademarks

- **(Definition)** A three-dimensional trademark refers to a trademark consisting of a three-dimensional shape itself or a three-dimensional shape combined with other elements such as symbols or letters **(Trademark Act §2(1)2, Enforcement Decree §2-1).**
- It was introduced in the Trademark Act (Act No. 5455, revised on August 22, 1997) and came into effect on March 1, 1998.



# Three Dimensional Trademarks

- (Example)

Banana-Flavored milk

Holder: "Binggrae"



**Product**



**Trademark**  
**Rg# 40-0645729**



# Three Dimensional Trademarks

- **(Types)** The types of three-dimensional trademarks can be classified as follows. However, three-dimensional shapes that do not fall under the categories below may still be included:
  1. A three dimensional shape of the product itself or a part of the product
  2. A three dimensional shape of the product's packaging or container
  3. A three-dimensional shape unrelated to 1 or 2
  4. A three-dimensional shape representing the interior or exterior of a point of sale or service provision space.



# Acquired Distinctiveness

- **(Trademark act Article 33)** Requirements for Trademark Registration
- **(Paragraph 2)** Even if a trademark falls under any of paragraph (1) 3 through 6, where such trademark is recognizable to consumers as a trademark indicating the source of goods of a specific person as a result of using the trademark before filing an application for trademark registration, trademark registration may be granted limited to the goods on which such trademark is used.



# Acquired Distinctiveness

- **(Trademark Examination Criteria)** Applicants claiming acquired distinctiveness must submit evidence (examples) such as
  - ① The trademark in use, ② The product in use, ③ Proof of continuous use over a significant period, ④ Proof of use nationwide or in a specific region, ⑤ Data on the production, manufacturing, processing, certification, sales volume, revenue, and market share of the product, ⑥ Methods, frequency, and details of use, ⑦ Methods, frequency, content, and duration of advertising and promotions, ⑧ Consumer recognition surveys, ⑨ Materials demonstrating product quality or reputation, and ⑩ Proof of exclusive and monopolistic use of the trademark.



# Acquired Distinctiveness

- **(Procedure)** When assessing a claim of acquired distinctiveness, the examiner must conduct a consultative review with a panel of three examiners, including the Trademark Team Leader. If the panel determines that the trademark has acquired distinctiveness, the case must be submitted to the **Acquired Distinctiveness Evaluation Committee** for final determination.





# Acquired Distinctiveness of Three-Dimensional Trademarks

- **(General Principles)** When determining the distinctiveness of a three-dimensional trademark, not only the three-dimensional shape itself but also its combined elements must be examined to assess the distinctiveness of the overall mark **(Supreme Court Decision 2014Hu2306, Feb. 26, 2015).**



# Acquired Distinctiveness of Three-Dimensional Trademarks

- **(Type 1) Distinctiveness of Marks Consisting Solely of a Three-Dimensional Shape**

A three-dimensional shape that is perceived as the conventional shape of the designated product, or only slightly altered but still recognized as representing the product's shape, is considered non-distinctive ([Supreme Court Decisions 2012Hu3800 and 2013Hu1146, Oct. 15, 2014](#)). However, if the shape possesses an exceptionally unique and distinctive design that consumers recognize as an indication of origin, distinctiveness may be acknowledged ([Supreme Court Decision 2013Da84568, Oct. 15, 2015](#)).



# Acquired Distinctiveness of Three-Dimensional Trademarks

- (Type 2) Distinctiveness of Marks Combining a Three-Dimensional Shape with Symbols, Letters, Numbers, or Figures

In cases where a three-dimensional shape is combined with symbols, letters, numbers, or figures, the distinctiveness of the overall mark should be assessed, considering both the shape and the additional elements. Even if the three-dimensional shape itself lacks distinctiveness, the mark may still be **considered distinctive** if combined with recognizable symbols, letters, numbers, or figures. However, if the additional elements are too small or unclear to be recognized, the mark will be **deemed non-distinctive**.



# Acquired Distinctiveness of Three-Dimensional Trademarks

- **(Related issue)** In many cases, three-dimensional trademarks are used with additional elements such as symbols, letters, or figures attached to the shape of the product. The key question is whether the history of using a three-dimensional shape in combination with such additional elements can serve as evidence of acquired distinctiveness for the shape itself.



# Acquired Distinctiveness of Three-Dimensional Trademarks

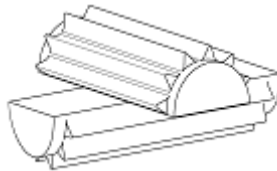
- **(Supreme Court Case)** Products often bear marks composed of symbols, letters, or figures. However, this alone does not automatically negate the acquisition of distinctiveness through use for the three-dimensional shape of the product itself. If, considering the appearance, size, placement, and recognition of the attached mark, the three-dimensional shape of the product has come to function independently as an indication of origin, distinct from the attached mark, then the acquisition of distinctiveness through use **can be recognized**. (Supreme Court Decision 2014.10.15, Case No. 2013Hu1146)



# Acquired Distinctiveness of Three-Dimensional Trademarks

- **(Case 1) Supreme Court Decision 2014.10.15., Case No. 2013Hu1146**
- **(Case 2) Supreme Court Decision 2015.10.15., Case No. 2013Da84568**

→ **Rejected**



→ **Accepted**





# THANK YOU



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