

Evidence of Non-Use Cancellation Case
IP High Court
Case No. H20 (Gyo-ke) 10101
October 24, 2011

FACTS

Plaintiff, X, sought a decision of non-use and cancellation against No 792786 in which proof of use was submitted in the trial by the registrant and considered proper use of the mark and thus the action was dismissed. In the action in IP High Court, the evidence submitted was re-examined for authenticity and credibility, and question were found in regard to its reliability. The date of shipping slip submitted by the registrant as an evidence was considered to be back dated. No counter argument was filed and the decision for dismissal of the trial was rescinded.

ISSUE

Whether there is any way to dispute the credibility of suspicious evidence submitted by a registrant in proving use?

HOLDING

(1) Submission of business related material

- a. If a real business transaction exists, submitting material thereof can be easily done. The registrant did not submit such evidence and argued that such is not necessary.
- b. The registrant did not submit a copy of a receipt with seal, which usually is kept as a record of a business transaction.
- c. The business relation was found to have existed for more than 30 years, yet the buyer but did not even request any evidence of such relation be furnished.
- d. A legal action failing to comply in the submission of business documents presents a situation diminishing the credibility of the submitted evidence.

(2) Date printed on the shipping slip

- a. The date July 1, 2004 and telephone number E of the buyer were written on the shipping slip.
- b. The phone number of buyer Y at that time was F. The number E was re-used starting in March 2005.
- c. It was clear that the slip was prepared after March 2005 when changed to the telephone number E, and the act of submitting such false document significantly prejudices the reliability of the documentary evidence and the credibility of its content.

(3) Reply from the Buyer

Buyer replied to the court that no shipping slip had been received and there was no order for 10 speaker units, other than a steam iron. The reply of buyer created strong doubt about the credibility of the evidence, and fact concerning use proved by the evidence submitted were rejected.