

### Case Information

Case	Tarzan CASE
Court, case no.	Tokyo High Court (H23 (Gyo-Ke) 10400)
Date of judgment	June 27, 2012 (H24)
Parties	Plaintiff: Edgar Rice Burroughs Inc. Defendant: STARSEIKI Co., Ltd.

### FACTS

The defendant was the owner of trademark registration no. 5338569 [present trademark] of “Tarzan” (standard alphabetical characters) with the designated goods of “plastic processing machines and apparatus, automatic removal robots for plastic molding machines, and chucks (machine parts)” in class 7, matured from the application filed on January 20, 2010 and granted on July 6, 2010. The plaintiff filed a request for an invalidation trial of the present trademark (Invalidation 2011-890014) on February 4, 2011. The Japan Patent Office [JPO] made the trial decision to dismiss the request on July 28, 2011. Then, the plaintiff filed a suit to seek rescission of the JPO decision.

### ISSUE

The issues were (1) whether “Tarzan” was widely known at the time of registration of the present trademark and (2) whether the present trademark was granted although it would damage the public policy (Article 4 (1) (vii) of the Trademark Act).

### HOLDING

The court rescinded the JPO decision, holding as follows.  
(1) It is held that what “Tarzan” evoked in Japan at the time of registration was a vague image of a young man swinging past on an ivy vine while shouting. However, it cannot be said that “Tarzan” evoked the fact that it is the title or the name of the leading character of novels written by the U.S. author, Burroughs, entitled the “Tarzan Series,” as well as a

specific character (feature and personality). Therefore, it cannot be said that the JPO's finding and determination are erroneous in terms of being widely known.

(2) "Tarzan" could not be recognized to have an economical evaluation with regards to general consumers in the field of the designated goods of the present trademark although "Tarzan" had certain power. However, "Tarzan" is not recognized as evoking any other concept and there is an organization having made efforts to maintain and manage its cultural and economic value. It is not reasonable that the defendant, who is not connected to the organization, filed the earliest trademark application and consequently became able to exclusively use the present trademark for the specific designated goods. Taking into account that a trademark registration can be easily renewed and that a trademark right can be maintained semi-permanently, the situation is hardly regarded as reasonable from the perspective of maintenance of fair transaction order. Therefore, the present trademark can be said to be an act of disturbing the fair transaction order and causing damage to public policy.

November 10, 2015

Original document (Japanese):

[http://www.ip.courts.go.jp/app/files/hanrei\\_jp/416/082416\\_hanrei.pdf](http://www.ip.courts.go.jp/app/files/hanrei_jp/416/082416_hanrei.pdf)

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