

J. Y. Interpretation No.486 (June 11, 1999) *

ISSUE: Is Article 37 of the Trademark Act, which provides that a trademark logo bearing the name of another group may not be registered unless such other group gives its consent, in violation of the Constitution?

RELEVANT LAWS:

Article 22 of the Constitution (憲法第二十二條), Article 37, Paragraph 1, Subparagraph 11, and Article 38, Paragraph 1, of the Trademark Act (商標法第三十七條第一項第十一款及第三十八條第一項)

KEYWORDS:

fundamental rights of the people (人民基本權), rights guaranteed by the Constitution (憲法上所保障之權利), interests protected under the law (法律上之利益), seek redress pursuant to the law (依法請求救濟), other group (其他團體), natural person (自然人), legal person (法人), legal capacity (權利能力), personality rights (人格權), property rights (財產權), legal acts (法律行為), autonomous entity (自主意思團體), trademark infringement (商標侵害), exclusive trademark rights (商標專用權), registered trademark (註冊商標).**

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HOLDING: Any person or entity whose rights are guaranteed by the Constitution or whose interests are protected under the law may seek redress pursuant to the law. The term “other group” referred to in the first part of Article 37, Paragraph 1, Subparagraph 11, of the Revised Trademark Act (Article 37, Subparagraph 11, of the Current Trademark Act) promulgated on May 25, 1989, means a group, i.e., not a natural person or a legal person, which has no legal capacity under the law. The purpose of the abovementioned statute is to protect the personality rights and property interests of the group within certain limits. Being the primary subjects of rights and obligations, natural persons and legal persons are naturally protected by the Constitution. However, to adhere to the constitutional protection provided for personality rights and property interests, a group which is organized and operated independently under a specific name, which engages in commercial acts or other affairs in the name of the group for a long period of time with considerable publicity, is well-known to the general public and has certain interests to

解釋文：憲法上所保障之權利或法律上之利益受侵害者，其主體均得依法請求救濟。中華民國七十八年五月二十六日修正公布之商標法第三十七條第一項第十一款（現行法為第三十七條第十一款）前段所稱「其他團體」，係指自然人及法人以外其他無權利能力之團體而言，其立法目的係在一定限度內保護該團體之人格權及財產上利益。自然人及法人為權利義務之主體，固均為憲法保護之對象；惟為貫徹憲法對人格權及財產權之保障，非具有權利能力之「團體」，如有一定之名稱、組織而有自主意思，以其團體名稱對外為一定商業行為或從事事務有年，已有相當之知名度，為一般人所知悉或熟識，且有受保護之利益者，不論其是否從事公益，均為商標法保護之對象，而受憲法之保障。商標法上開規定，商標圖樣，有其他團體之名稱，未得其承諾者，不得申請註冊，目的在於保護各該團體之名稱不受侵害，並兼有保護消費者之作用，與憲法第二十二條規定之意旨尚無牴觸。

be protected, falls within the scope of protection under the Trademark Act regardless of whether it promotes public welfare and is therefore protected by the Constitution. The abovementioned Trademark Act provides that a trademark application shall be rejected if the proposed trademark comprises the name of another group without permission. The purpose of the abovementioned statute is to protect the name of the group against trademark infringement and to protect consumers from the likelihood of confusion. It is therefore consistent with the provisions set forth in Article 22 of the Constitution.

REASONING: The protection provided to the fundamental rights of the people is the primary responsibility of a modern rule-of-law nation. Any person or entity whose rights are guaranteed by the Constitution or whose interests are protected under the law may seek redress pursuant to the law. The term “other group” referred to in the first part of Article 37, Paragraph 1, Subparagraph 11, of the Revised Trademark Act (Article 37, Subparagraph 11, of the Current Trade-

解釋理由書：人民基本權利之保障乃現代法治國家之主要任務，凡憲法上所保障之權利或法律上之利益受侵害者，其主體均得依法請求救濟。商標法第三十七條第一項第十一款（現行法為第三十七條第十一款）前段所稱「其他團體」，係指於自然人及法人以外其他無權利能力之團體而言，其立法目的係在一定限度內保護該團體之人格權及財產上利益。按自然人及法人為權利義務之主體，當然為憲法保護之對象；惟為貫徹憲法對人格權及財產權之保障，

mark Act) promulgated on May 25, 1989, means a group, i.e., not a natural person or a legal person, which has no legal capacity under the law. The purpose of the abovementioned statute is to protect the personality rights and property interests of the group within certain limits. Being the primary subjects of rights and obligations, natural persons and legal persons are naturally protected by the Constitution. However, to adhere to the constitutional protection provided for personality rights and property interests, a group which has no legal capacity may still seek redress under the Trademark Act as “other group” if it meets the following requirements: A group must be organized by multiple persons for a particular purpose under a specific name, have firms or places of business with independently controlled assets and managers or representatives to carry out legal acts in the name of the group. Because such a group has the substance and organization identical to that of a legal person and is an autonomous entity existing independently from its constituents, it therefore falls into the category of “other group” referred to in the Trade-

非具有權利能力之「團體」，如係由多數人為特定之目的所組織，有一定之名稱、事務所或營業所及獨立支配之財產，且設有管理人或代表人，對外並以團體名義為法律行為，在性質上，具有與法人相同之實體與組織，並具有自主之意思能力而為實質之單一體，且脫離各該構成員而存在，固屬該法所稱之「其他團體」。至其他有一定之名稱、組織而有自主意思之團體，以其團體名稱對外為一定商業行為或從事事務有年，已有相當之知名度，為一般人所知悉或熟識，且有受保護之利益者，不論是否從事公益，均為商標法保護之對象，而受憲法之保障。商標法第三十七條第一項第十一款（現行法為第三十七條第十一款）前段規定：商標圖樣，有其他團體之名稱，未得其承諾者，不得申請註冊。旨在保護各該團體之名稱不受侵害，並兼有保護消費者之作用，與憲法第二十二條規定之意旨尚無牴觸。又申請註冊之商標，因尚未經核准註冊，固未取得商標專用權，然商標註冊申請所生之權利，得移轉於他人，為商標法第三十八條第一項所明定，是以該項權利，具有財產上之價值，應屬憲法保障之財產權，權利主體自得以該權利遭受不法侵害為由，依法請求救濟。至

mark Act. A group which is organized and operated independently under a specific name, which engages in commercial acts or other affairs in the name of the group for a long period of time with considerable publicity, is well-known to the general public and has certain interests to be protected, falls within the scope of protection under the Trademark Act regardless of whether it promotes public welfare and is therefore protected by the Constitution. The first part of Article 37, Paragraph 1, Subparagraph 11, of the Revised Trademark Act (Article 37, Subparagraph 11, of the Current Trademark Act) provides that a trademark application shall be rejected if the proposed trademark comprises the name of another group without permission. The purpose of the above-mentioned statute is to protect the name of the group against trademark infringement and to protect consumers from the likelihood of confusion. It is therefore consistent with the provisions set forth in Article 22 of the Constitution. In addition, Article 38, Paragraph 2, of the Trademark Act provides that a trademark applicant will not acquire any exclusive trademark rights

公司籌備處是否屬於商標法第三十七條第一項第十一款（現行法為第三十七條第十一款）所稱之「其他團體」，則應依前開解釋意旨，視具體情形而定，併此指明。

without obtaining the approval of his or her trademark application. However, once his or her trademark application is approved, the rightful trademark owner may assign his or her trademark rights to others. These exclusive trademark rights accorded by the Trademark Act are property with a considerable value and therefore fall within the category of property rights protected by the Constitution. The rightful owner of a registered trademark may seek redress pursuant to the law based on the reason that his or her constitutionally protected property rights have been infringed. As for the preparatory office of a corporation, whether it falls within the category of “other group” referred to in Article 37, Paragraph 1, Subparagraph 11, of the Revised Trademark Act (Article 37, Subparagraph 11, of the Current Trademark Act) will depend upon the totality of the circumstances in accordance with the preceding opinion.