

J. Y. Interpretation No.104 (March 11, 1964) *

ISSUE: What is the meaning of the term “well-known” as used in the Trademark Act?

RELEVANT LAWS:

Article 2, Subparagraph 8 and Article 3 of the Trademark Act (商標法第二條第八款、第三條); Interpretation Yuan-tze No.1008, part II (司法院院字第一〇〇八號解釋之二) .

KEYWORDS:

registered trademark (註冊商標), within the territory of the Republic of China (中華民國境內), well-known (世所共知) .**

HOLDING: “Well-known” in Article 2, Subparagraph 8, of the Trademark Act means “commonly known to the general public within the territory of the Republic of China”.

解釋文：商標法第二條第八款所稱世所共知，係指中華民國境內，一般所共知者而言。

REASONING: The Trademark Act was promulgated by the Legislative Yuan, and is applicable to the entire nation. A properly registered trademark is

解釋理由書：商標法為中央立法，以全國為適用範圍，商標註冊之效力亦及於全國，此觀於同法第三條各項均有中華民國境內之規定可以概見，故

* Translated by Li-Chih Lin, Esq., J.D.

** Contents within frame, not part of the original text, are added for reference purpose only.

valid within the territory of the entire nation. This interpretation is evident by the fact that “within the territory of the Republic of China” provision is included in all paragraphs of Article 3 of the Trademark Act. Therefore, “well-known” in Article 2, Subparagraph 8, of the Trademark Act means “commonly known to the general public within the territory of the Republic of China”. The second part of J. Y. Interpretation Yuan-tze No. 1008 was decided prior to the amendment to Article 2, Subparagraph 6, of the Trademark Act, and should therefore be revised and clarified accordingly.

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Shi-Ding Chin joined.

Justice Shang-Kuan Shih filed dissenting opinion.

商標法第二條第八款所謂世所共知應指中華民國境內，一般所共知者而言，本院院字第一〇〇八號解釋之二，係對修正前商標法第二條第六款所為之解釋應予補明。

本號解釋徐大法官步垣與金大法官世鼎共同提出不同意見書；史大法官尚寬提出不同意見書。