

In re **LEONARD KAMHOUT**
 (“Consent” as stipulated in Article 4(1)8 of the Trademark Law - [Trademark](#)
 [consisting solely of a mark indicating the place of origin](#))
 Supreme Court Decision
 Case H15 (Gyo-Hi) No. 265 (June 8, 2004)

Facts

The appellant, X, filed a trademark application for “LEONARD KAMHOUT” on October 22, 1998. The trademark consists of the name of a silver jewelry designer, Mr. Leonard Kamhout. While Article 4(1)8 of the Trademark Law stipulates that no trademark shall be registered if the trademark contains the name of person other than the applicant unless that person has given his consent to the registration. In this case, there was no consent from Kamhout.

Later, on January 26, 1999, X filed an amendment with the Japan Patent Office (JPO) attaching a signed consent from Kamhout. However, Kamhout filed a revocation of consent with the Japan Patent Office on May 25, 2000.

Disposition the Lower Courts

The JPO rejected the application for registration of the trademark on the grounds that the application fell under Article 4(1)8 of the Trademark Law. X filed an appeal, which was denied by the Appeal Examiners.

X then appealed to the Tokyo High Court, arguing that, on the grounds of Article 4(3), once consent was obtained, the application should not fall under Article 4(1)8 even if consent is lacking at the time of the JPO’s decision on the application. The Tokyo High Court dismissed the appeal.

X ultimately appealed the case to the Supreme Court, arguing that there were mistakes of interpretation and application of Articles 4(1)8 and 4(3).

Issue

When the mark consists of a person’s name, is the consent of such person necessary not only at the time of filing but also at the time of JPO decision on the application in order that the application may proceed to

registration?

Holding

Article 4(3) should not be applied to a trademark application that does not fall under Article 4(1)8 because there was consent of the person concerned at the time of filing.

Conversely, a mark that does fall under Article 4(1)8 at the time of filing does need consent at the time of the JPO's decision on the application. Even if there is consent at the time of filing, if consent is lacking at the time of decision, the mark cannot be registered.

In view of above, the application for "LEONARD KAMHOUT", which was without the consent of Kamhout at the time of the JPO's decision on the application, should be refused on the grounds that it falls under Article 4(1)8.