

[Case]

Please kindly suppose a civil lawsuit is filed in your country in respect of the following hypothetical case:

(1) Parties

(a) Plaintiff: XBC Co. Ltd. ("**XBC**")

XBC is the former sole distributor in your country of the Asia Building Construction Machine Corporation ("**ABCM Corp.**") (ABCM is headquartered abroad (not your country)).

In your country, XBC has registered a trademark that the designated goods are construction machineries etc. ("**Plaintiff's Trademark**") as follows:

Plaintiff's Trademark: "ABCM"

A B C M

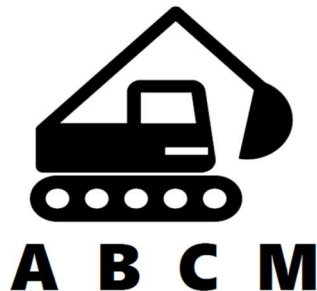
(b) Defendant: YBCM Inc. ("**YBCM**")

YBCM is a wholly owned subsidiary of ABCM Corp. YBCM imports construction machineries produced by ABCM Corp. into your country, and sells or leases them to construction companies in your country. The products bear one of the following marks ("**Defendant's Mark**").

Defendant's Mark 1: alphabetical trademark "ABCM"

A B C M

Defendant's Mark 2: alphabetical trademark "ABCM" and images of construction machinery



Defendant's Mark 3: The word which is expressed "ABCM" in the language of your country

(2) Background facts

(a) ABCM Corp. is a company established under the laws of another country (not your country) that manufactures and sells construction machineries and it routinely conducts business in East and

Southeast Asia. Since the incorporation, ABCM Corp. has used the mark "ABCM" and the Defendant's Marks as described above for its products. The company's name and the alphabetical trademark "ABCM" are well known in ABCM Corp.'s home country, but they are not well known in your country.

- (b) Until five(5) years ago, XBC (Plaintiff), as the sole distributor of ABCM Corp. in your country exclusively sold construction machineries manufactured by ABCM Corp. in your country. However, due to revitalization of market activity in your country, ABCM Corp. planned to establish a wholly owned subsidiary in your country for the purpose of distributing ABCM Corp.'s machineries. XBC negotiated with ABCM Corp. to maintain its distributorship, but that attempt failed. As a result, ABCM Corp. terminated the exclusive distributorship agreement with XBC in compliance with relevant laws and contractual obligations in your country.
- (c) On the other hand, around the time when the negotiation mentioned in (2)(b) above was started, XBC applied for and registered Plaintiff's Trademark (ABCM) with the IP authority of your country without the permission of ABCM Corp., by taking advantage of the fact that ABCM Corp. had not obtained a registered trademark in your country (and no application was filed under the Madrid Protocol).
- (d) At the beginning of last year, ABCM Corp. then incorporated YBCM (Defendant) as a wholly owned subsidiary in your country, and started its business directly through YBCM in your country.
- (e) This year, XBC filed the lawsuit in your country against YBCM complaining the importation, sales, and lease of the construction machineries bearing Defendant's Mark(s) is the infringement of Plaintiff's Trademark.

[Questions]

Given the hypothetical case described above, we would like you answer the following questions:

- Q1 What kind of claims and allegations might XBC (Plaintiff) raise regarding trademark infringement in your country (for example, injunction and compensation for damages against the sale of the defendant's products in your country on the grounds of trademark infringement)?
- Q2 What kind of defenses and allegations might YBCM (Defendant) raise regarding trademark infringement in your country (for example, non-similarity of the trademark, cancellation of registration or invalidation of plaintiff's trademark, license, etc.)?
- Q3 Please explain how the trademark infringement cases are judged in your country, and how you judge trademark infringement in the hypothetical case above, including the following points.

1) What factors are taken into account in making decisions on the similarity of the Plaintiff's and the Defendant's marks?

2) Is the similarity regarding designated goods or services considered? If so, what factors are taken into account?

Q4 How are infringement and damages theories asserted, proven, and refuted in the course of litigation? [For instance, are they respectively determined on two different stages?]

Q5 Please explain how damages for trademark infringement are calculated in your country.

Q6 If the Plaintiff had registered the Plaintiff's Trademark but has not actually been used for the sale of construction machinery, would the decision in Q1 to Q5 be affected?

Q7 If this case were filed in your country, what final judgment would you expect by taking into account the Defendant's defenses available? Please briefly explain your conclusions and reasons.

Q8 Please explain the enactment or amendment of any trademark laws in your country within the last five (5) years, including the recent legislation to be compliant with treaty obligations (e.g., the TPP Agreement).

In addition, please kindly provide information on the characteristics of the registration and use of trademarks in your country as compared to other countries.

[Your Answers]

For the purpose of the arrangement of the materials, we would appreciate it if you could follow the method below:

-Please summarize the main points of your answers in Microsoft PPT format in approximately one slide for each question.

-If you would like to share reference materials in English, please list your references, including main points, titles, and sources (website URLs are acceptable), in a document prepared in Microsoft Word file format.

-Copies of original text should be avoided with regard to materials such as articles and judgments. If it is necessary for the purpose of explanation, please quote only the most necessary sections.

Thank you very much for your cooperation in advance.