

Comments of Japan
on
-DRAFT QUESTIONNAIRE CONCERNING THE PROTECTION OF NAMES
OF STATES AGAINST REGISTRATION OR USE AS TRADEMARKS-

● Question 6 asks if there are exceptions to the protection of state names against trademark registration. We have some difficulty understanding what is meant by “exceptions,” as this term has various meanings including the following:

1. Protection is limited when the court determines that a trademark has a lack of descriptiveness or that there is a likelihood of confusion as to geographic origin.
2. Protection may not be given even when the mark is found to be descriptive or likely to mislead as to geographic origin.

We believe that the answer to such an ambiguous question depends solely on the interpretation of a country and that the results obtained will be misleading. Therefore, we would like to suggest that this question be deleted.

If Question 6 is not to be deleted, then it should be rewritten as an open-ended question (not as a question that requires only a *yes* or *no* response) because only detailed explanations of exceptional cases are valuable. The question could be changed as follows: “If under the applicable legislation, names of States are generally protected against registration as trademarks, describe the details of any particular exceptions to such protection.”

● Can the phrase “[are] protected against use as trademarks” be interpreted as “prohibition of the use of trademarks concerned”? If so, the wording of the phrase should be the same or similar to the wording in Article 6^{ter}(1)(a) of Paris Convention (i.e., “prohibit,” “prohibited,” “prohibition(s),” etc.) which prohibits the use of armorial bearings, etc. as follows:

The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.