

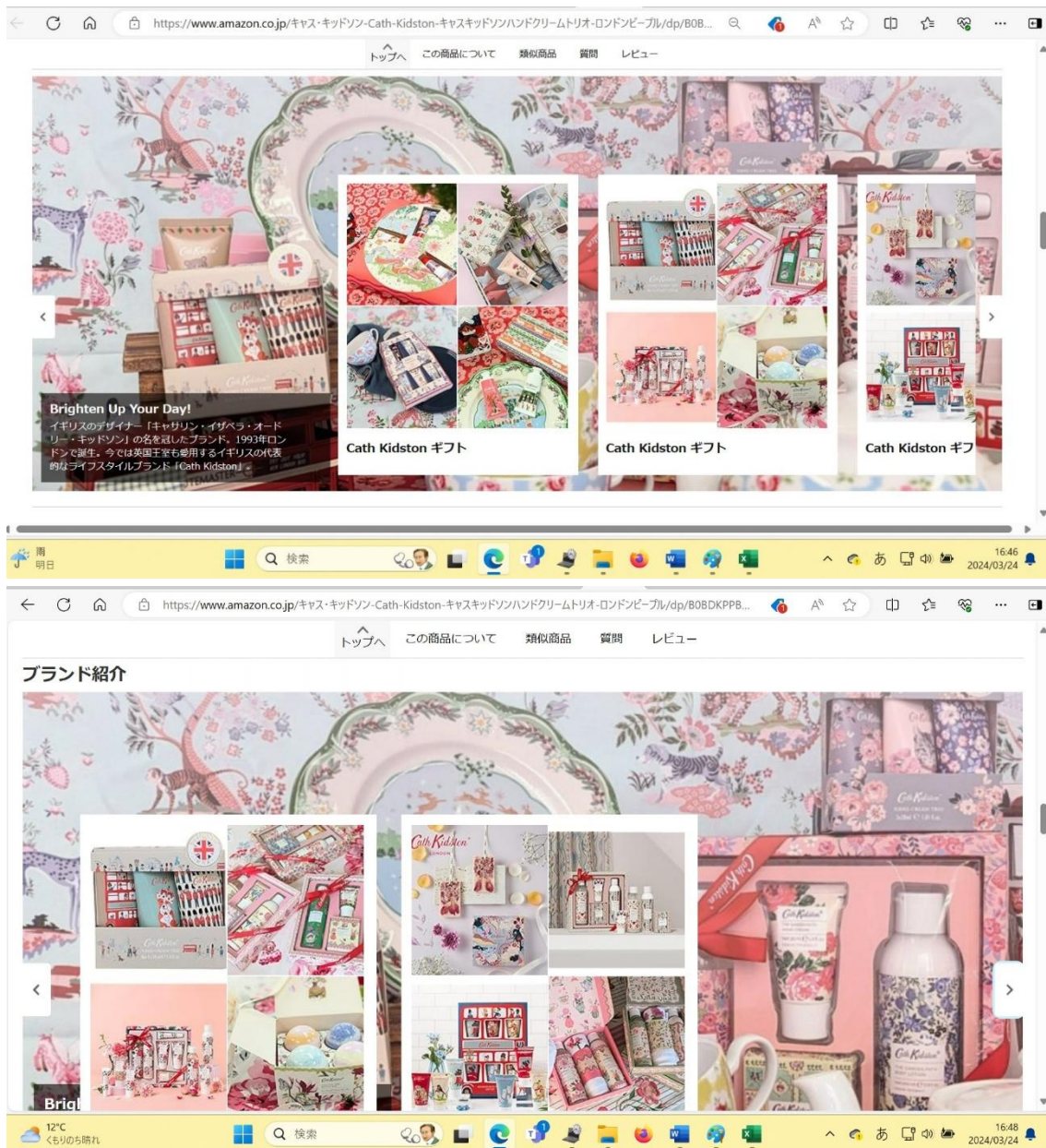
Claimant's Brief 12

17. Appendix 1-20 [26 January 2024]: Use of 'Cath Kidston' is an Intellectual Property Infringement (trademark violation)

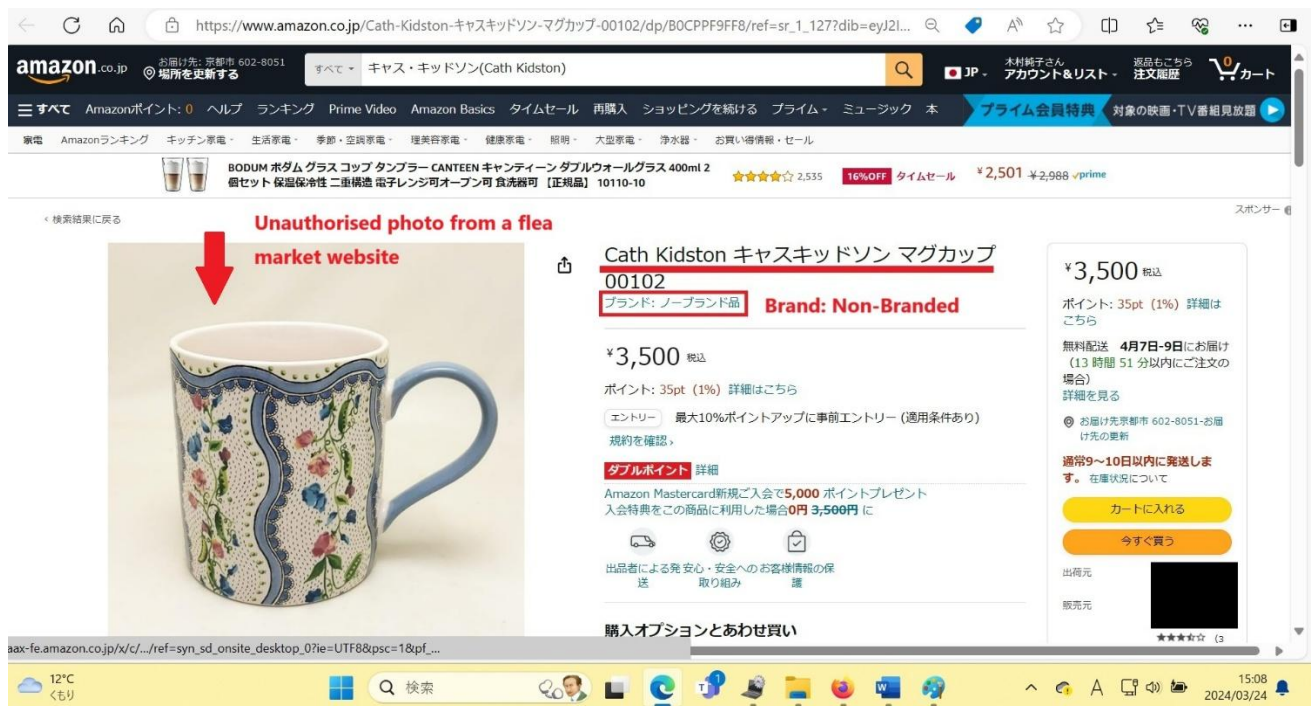
Amazon.com claimed an Intellectual Property infringement against the Claimant for only one of 303 parallel-imported Cath Kidston items listed by the Claimant [Claimant Note: The item in question was purchased from Cath Kidston on 13 October 2021. It was listed as 'parallel- imported' Cath Kidston on Amazon.co.jp on 6 November 2021 and sold on 13 November 2021. It has been unavailable to buy since then, although the catalogue remains].

- a. Amazon removed the Claimant, its competitor, from their own marketplace by abusing its superior bargaining position (Exclusionary Private Monopolisation)

Amazon runs the brand store of Cath Kidston as a seller on Amazon.co.jp (Claimant's Exhibit 174).

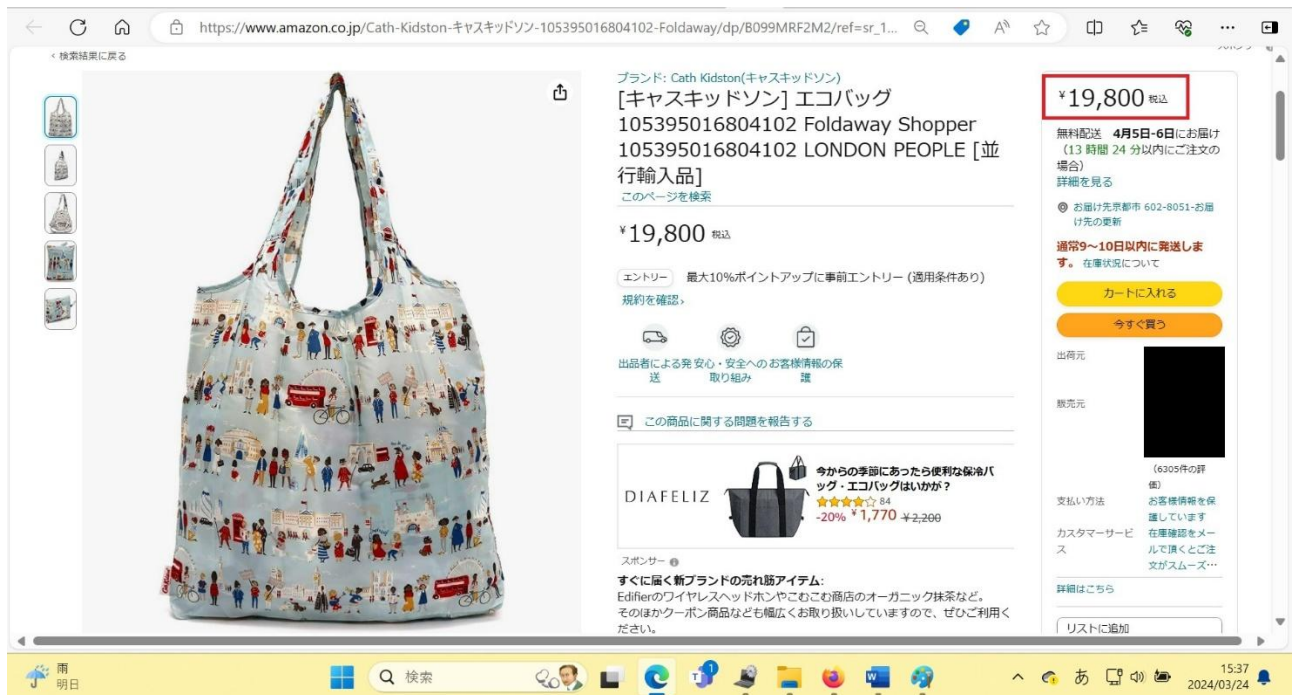


However, it is not a problem for other sellers to sell these items. For instance, Amazon provided the 'Buy Box' for one-click convenience to a seller who listed the Cath Kidston brand as 'Brand: Non-Branded' and reprinted the item as being listed on a flea market website (1 of Claimant's Exhibit 175).



However, the seller was informed by a customer in seller reviews that they were in fact selling their item listed on a flea market website without authorisation.

Amazon also provided the 'Buy Box' to a product sourcing drop shipper who was selling the same item that the Claimant was selling (at 2780 yen) at a colossal 19800 yen. The 'Buy Box' would have been the result of the seller contributing to Amazon's overwhelmingly huge product selection by listing over 100,000 items (2 of Claimant's Exhibit).



b. By not disclosing the rights owner claiming the Intellectual Property infringement, Amazon imposed disadvantages on the Claimant that go beyond a reasonable extent. Such action is considered to be an abuse of a superior bargaining position.

[Excerpt from the Intellectual Property for Rights Owners on Seller Policies]

Reporting Infringement

To submit a notice of IP infringement, you must be the Rights Owner who owns the IP being reported or an agent with permission from the Rights Owner to submit notices on his or her behalf. Do not forget to provide your contact details (name, address, phone number, email address, secondary contact details) when you report infringement.

When the Claimant checked the trademarks of Cath Kidston, she found that

CK Acquisitions Limited owned Cath Kidston in 2021 at the time when the Claimant purchased the genuine item. After going into administration, PwC, which was appointed as one of the Joint Administrators of CK Acquisitions Limited, completed the sale of the brand, website, and intellectual property of CK Acquisitions Limited to Next Retail Limited on 28 March 2023.¹ Having perused the UK company register of CK Acquisitions Limited,² the Claimant learnt that the company owned Intellectual Properties of Cath Kidston all over the world, including in the UK,³ the EU,⁴ and Singapore,⁵ and that the owners have been changed to Next Retail Limited accordingly.

¹ PwC Our Work CK Acquisitions Limited (<https://www.pwc.co.uk/services/business-restructuring/administrations/ck-acquisitions-limited.html#:~:text=On%2028%20March%202023%2C%20Zelf,Limited%20to%20Next%20Retail%20Limited>). Last visited on 30 March 2024)

² GOV.UK Companies House CK ACQUISITIONS LIMITED Company number 12528955 Charge code 1252 8955 0005 PDF (https://find-and-update.company-information.service.gov.uk/company/12528955/charges/JRtzmocCq3cFY1i5AiJ_NNHxHJQ). Last visited on 31 March 2024)

³ GOV.UK Intellectual Property Office Cath Kidston (<https://trademarks.ipo.gov.uk/ipotmcase/page/Results/1/UK00915020332>). Last visited on 31 March 2024)

⁴ EUIPO Cath Kidston (<https://euipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100+100/Cath%20Kidston>). Last visited on 31 March 2024)

⁵ IPOS Digital Hub (https://digitalhub.ipos.gov.sg/FAMN/eservice/IP4SG/MN_TmSimilarMarkSearch). Last visited on 31 March 2024)

Regarding the owners of Cath Kidston trademarks in Japan, trademarks in the Japanese language continued to be listed as 'CK Acquisitions Limited' whereas international registrations were changed to Next Retail Limited on 8 February 2024.⁶

Based on the above investigations and for the reasons presented below, the Claimant alleges that Amazon abused the Brand Registry and made the Intellectual Property infringement claim arbitrarily to target the Claimant.

(1) There is no reason for CK Acquisitions Limited, which went into administration, to claim a trademark violation for a parallel-imported item which it had sold more than 2 years ago.

(2) The item in question has been discontinued and is no longer available to purchase in the product range of Cath Kidston store run by Next Retail Limited, the current rights owner of the brand. If Next Retail Limited made the claim of a trademark violation with the intention of eliminating a genuine parallel-imported item, this would have been to secure their profits. Hence, such a trademark claim should have been applied to all items sold by their competitors on

⁶ J PlatPat (<https://www.j-platpat.inpit.go.jp/h0020>. Last visited on 31 March 2024)

Amazon. The Claimant, however, reasserts that Amazon claimed the Intellectual Property infringement for a single genuine Cath Kidston item which the Claimant had purchased from Cath Kidston and sold in the past - the claim did not extend to the other 303 items which the Claimant had listed as Cath Kidston.

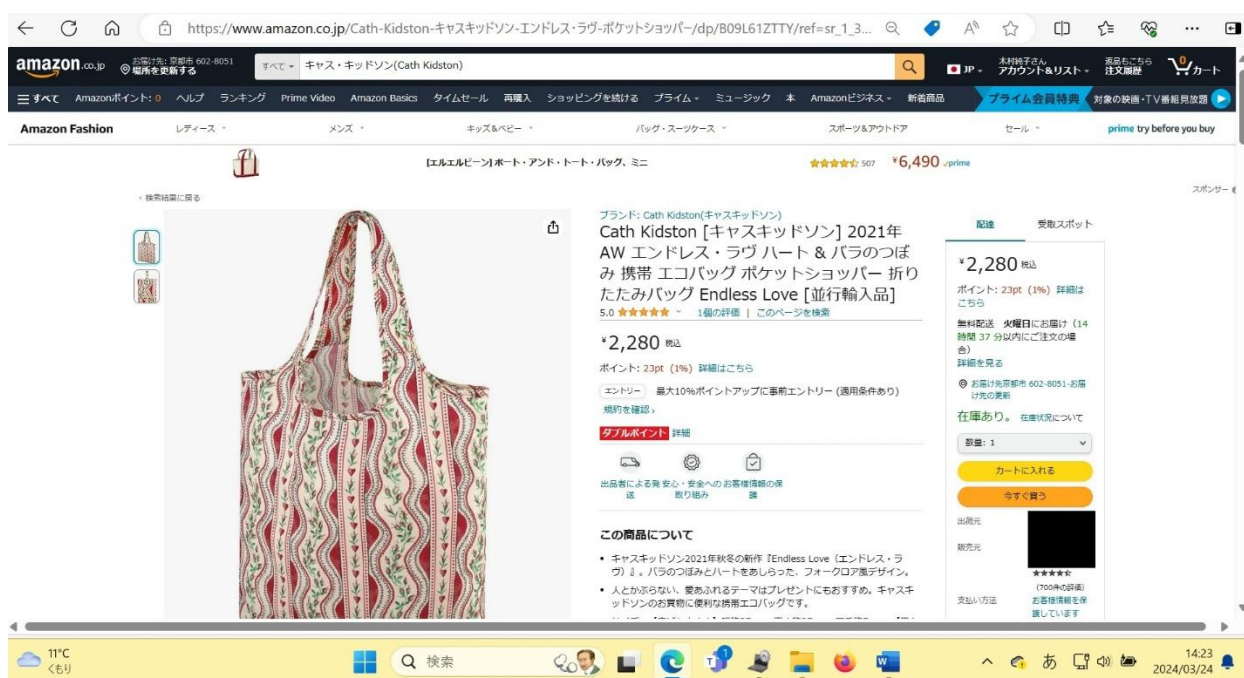
- (3) Amazon asked the Claimant to appeal, if necessary, by no later than the day after the Intellectual Property infringement claim was made. However, the Claimant's appeal was submitted on time, along with evidence to prove the item is a genuine parallel-imported item, it was unilaterally rejected by Amazon without even disclosing the rights owner and giving the Claimant an opportunity to appeal directly to the said rights owner (Claimant's Brief 7, p. 4, 4-(2)). Thus, Amazon completed the process of eliminating a parallel-imported item on their website.

c. Although Amazon removed the Cath Kidston item which the Claimant had sold in the past on the grounds that it was a trademark violation, Amazon itself is selling an item purchased from the Claimant and listed on the

catalogue which the Claimant had created for the item.

The Claimant purchased all Cath Kidston merchandise from the same company (i.e. Cath Kidston store). Therefore, if Amazon claimed one genuine item from Cath Kidston to be a trademark violation, the other 303 should also have been the subject of trademark violations. Indeed, this is apparent in cases involving other Intellectual Property infringement claims where Amazon removed all items using the brand names from their website, such as those in Appendixes 1-18 and 1-19.

However, as referred to in 5-(2) in this Brief, there has been no problem with any other sellers (except the Claimant) selling Cath Kidston items using the catalogues which the Claimant had listed (Claimant's Exhibit 176).

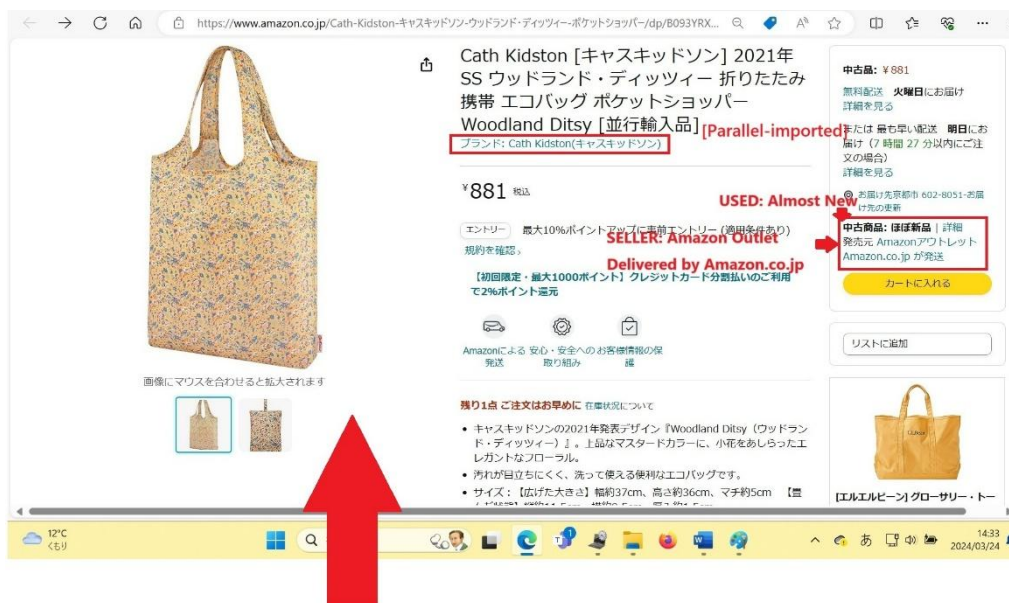


Furthermore, on 2 November 2023, Amazon damaged a Cath Kidston shopper bag in their warehouse which the Claimant was selling at 2980 yen – this was a different Cath Kidston item from that being claimed as an Intellectual Property infringement (appendix 1-20). Amazon informed the Claimant that it had refunded her 1929 yen, which it believed would be sufficient for the item. In fact, the Claimant will explain in the next Brief whether the amount of reimbursement offered one-sidedly by Amazon is appropriate in terms of taking ownership of their own mistakes.

The shopper bag which Amazon admitted it had damaged and bought from the Claimant was listed as being out of stock on the catalogue on 11 January 2024 as it was the last one to be sold. Fifteen days later, on the on 26 January 2024, Amazon claimed the Intellectual Property infringement for another item which the Claimant had also purchased from Cath Kidston and sold in the past (Item referred to in Appendixes 1-20), and removed the item the following day.

Amazon informed the Claimant that the shopper bag became impossible to sell due to damage, which it admitted was its fault. However, it disclosed not only to the Claimant but also to consumers considering purchasing the item

what damage the item had suffered. Yet Amazon does not explain defects to consumers, which a consumer article explains is ‘the problem in buying from Amazon Outlet’. However, although Amazon claimed an Intellectual Property infringement (Trademark: Cath Kidston) for the Claimant’s item and removed it from its website, it started selling the shopper bag - which it damaged in their warehouse and bought from the Claimant at 881 yen - as an Amazon Outlet on the Cath Kidston catalogue created by the Claimant, rather than on its own Cath Kidston brand store (Claimant’s Exhibit 178).



Catalogue created by the Claimant, for which Amazon asserts that the use of 'Cath Kidston' is an intellectual property (IP) infringement. Amazon is selling the item (which it claimed was unsellable and which it purchased from the Claimant) as 'Almost New' under the catalogue of the Claimant being assused of the above-mentioned IP infringement.

Thus, although Amazon claimed the item (Appendix 1-20) which the Claimant was selling in the past was a trademark violation and removed it from their website, it is selling a Cath Kidston shopper bag (which the Claimant being accused of the trademark violation was selling) it bought from the Claimant, despite having informed the Claimant the item was damaged (unsellable), and is listing it as 'Used: Almost New' (hence it is not disclosing any faults with the item whatsoever). Such action constitutes an act of tort infringing a trademark (Presumption of negligence in Article 39 of the Trademark Act) as it cannot be acknowledged that the item in question has been put in the channel of distribution in accordance with the will of the Cath Kidston company.⁷ Moreover, it contradicts the assertion that Amazon actively engages in removing suspected listings in line with their brand protection policy.⁸

⁷ Japan Institute for Promoting Invention and Innovation, Intellectual Property Rights Precedents News, 1996-2, 'The precedent which acknowledged sales of such as sampling and damaged items infringe Trademark rights'

(<https://www.hanketsu.jiii.or.jp/hanketsu/jsp/hatumeisi/news/199602news.html>. Last visited on 31 March 2024)

⁸ 'If Amazon cannot remove the listing until it is confirmed in full that the listed item infringed the third party's Intellectual Property or Amazon's Intellectual Property Policy (in the following, explaining the case where the listed item was a counterfeit as an example), there is a risk of significant damages as the sale of counterfeit will continue whilst Amazon

In the Seller Forum, a seller pointed out that counterfeits confiscated by Amazon have been resold as Amazon Outlet items (Claimant's Exhibit 179). Therefore, there are several cases in which consumers became the victims.

d. Because Amazon run a private system under the name of the Amazon Brand Registry, which was made to work for their own convenience, the Intellectual Property infringement does not extend to Amazon itself.

In Appendix 1-7, Amazon claimed the Intellectual Property infringement (Trademark violation: Little My) against the Claimant because she mistakenly listed one of the songs contained in a music box as 'Little My Children' instead of 'My Little Children' in the item description.

Amazon writes Cath Kidston's Brand Name as 'Cath (bullet point) Kidston' in Japanese for their own Cath Kidston brand store (Claimant's Exhibit 180); however, the rights owner of Cath Kidston has not been registered as such [Claimant's Note: see the following for more information].

conducts an investigation to obtain confirmation of this. This will infringe the rights of brand owners and risk extending the damage even further.' (Defendant's Brief (2), p. 6)

https://www.amazon.co.jp/Cath-Kidston-キャスキッドソン-インダ
ルジェント ボディケアセット ドラゴン
ズキングダム

ブランド: キャス・キッドソン(Cath Kidston)

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Brand:キャス・キッドソン
(Cath Kidston)

¥2,819 税込 (¥705 / 個)

ポイント: 28pt (1%) 詳細はこちら

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商品の形状 クリーム
ブランド キャス・キッドソン(Cath Kidston)

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キャス・キッドソン

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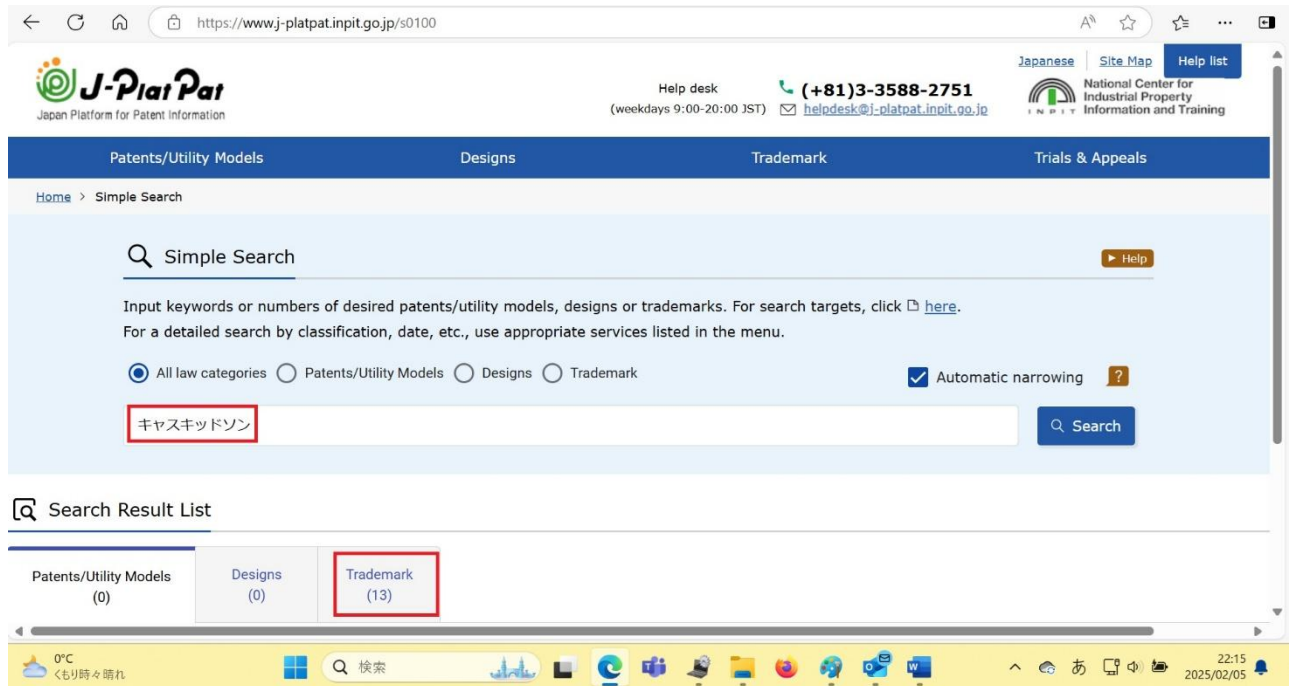
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検索

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In fact, the search result for ‘Cath (bullet point) Kidston’ in Japanese (see above) shows no trademark register on the J-PlatPat (Japan Platform for Patent Information). Therefore, Amazon itself conducted a trademark

violation and infringed the Intellectual Property rights of Cath Kidston as

Article 4 (1) (xi) of the Trademark Act designates that unregistrable trademarks are those identical to, or even similar to, another person's registered trademark.

As previously asserted in this Brief (14-c), the Intellectual Property infringement does not extend to Amazon because the main brand, Amazon, being registered in the Brand Registry, has been prioritised, whereas Cath

Kidson, whose trademark should have been prioritised, becomes a subordinate brand. Thus, Amazon as a platformer manipulatively runs its own algorithm and conducts acts of torts by applying rights (i.e. Intellectual Property infringements) to sellers whilst excluding itself as a seller at its own discretion. The place where sellers report the acts of torts conducted by Amazon is the Legal Department of Amazon Japan, a mere branch office of Amazon.com in the US. Therefore, trademarks registered in Japan have not been treated as a highly important matter when running the business in Japan for Amazon.co.jp, as a consequence of which many sellers - including the Claimant, who had no choice but to seek expensive legal advice from lawyers and patent attorneys only to receive the same reply with astonishment ('Your item was removed for such an unreasonable reason?') - have suffered damages (Claimant Exhibit 181, 1&2). By contrast, Amazon itself carries out outrageous activities. These include 1) rewriting the Seller Code of Conduct without informing sellers when an inconvenient truth was pointed out to it by the Claimant; 2) applying the privilege that only Amazon as a seller can sell items which are banned according to the Seller Code of Conduct (Claimant's Exhibit 182); 3) discarding a seller's genuine item as a

counterfeit [Claimant Note: The item being accused as a counterfeit by Amazon proved to be a genuine item when sufficient documents were provided] by ignoring not only Japanese Law but also US Law; and 4) being informed by a seller that [Amazon] 'Selling purchased items from sellers without paying the consumption tax constitutes a potentially unlawful activity' (Claimant's Exhibit 179).

- e. Amazon is selling **Cath Kidston items contrary to the purpose of the Fair Competition Code (Article 31 of Act against Unjustifiable Premiums and Misleading Representations)⁹** and is imposing disadvantages on consumers.

[Claimant Note: Article 31 (1) An Entrepreneur or a Trade Association may, upon obtaining authorisation from the Prime Minister and the Fair Trade Commission pursuant to the provisions of Cabinet Office Order, with respect to the matters relevant to Premiums or Representations, conclude or establish an agreement or rules aimed at preventing unjust inducement of customers and securing general consumers' voluntary and rational choice-

⁹ Consumer Affairs Agency, Fair Competition Code
(https://www.caa.go.jp/policies/policy/representation/fair_labeling/fair_competition_cod
e. Last visited on 8 April 2024)

making and fair competition between Entrepreneurs. The same applies in the event alterations thereof are being attempted.]

The item which Amazon is selling (Claimant's Exhibit 180) not only constitutes a trademark violation as referred to on the previous page, but also consists of cosmetics (e.g. hand cream, body lotion, body wash) made abroad for which the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (hereinafter called 'PMD Act') is applicable. Despite this, neither the product detail nor the ingredients contained in the cosmetics are provided in the catalogue.

Moreover, although Amazon states the delivery takes 1-2 months, it sells their item with the 'Buy Box' provided.

The body care products of Cath Kidston are not domestically produced.

Although the Claimant searched for the item on the internet as a consumer who is considering a purchase and 'possesses sound common sense'¹⁰, which

¹⁰ Court's verdict delivered on 15 November 2019, 2018 (Gyo-U) Case No. 30, the action for revocation of the Order for Action.

Amazon asserted the following: 'Consumers who possess sound common sense usually gather information not only from the product detail page, including the item in question being displayed as (3), but also from the various sources as references. Therefore, it can be said that consumers have sufficient common sense and knowledge about not only the price of the item in question being displayed as item (5) but also the prices of other items

is what Amazon asserted in the lawsuit brought against the Japanese Government, the same item was not found and it is unknown what ingredients it contained and from where the item would be delivered. The Incorporated Administrative Agency National Consumer Affairs Centre of Japan issued the following warning to consumers: ‘When consumers purchase items using online shopping sites, there are cases where they place orders without knowing sellers are overseas businesses operators (border crossing providers) and the items are delivered directly from overseas without the intervention of domestic distributors.’ Hence, it advises consumers to make a purchase decision only after thoroughly checking the explanations written on the online stores.¹¹ In fact, UK Amazon, which is a group company for Amazon Japan, is selling the body care products of Cath

[Claimant Note: 5 items in total were listed] including item E [Claimant Note: item (5) is also called Item E), as they are given an indicator as to what level of price would be the general price of E. For this reason, it can be said that it had been obvious for consumers who possess sound common sense that a ‘Reference price’ displayed as (3) in this lawsuit was an excessive level of error’ (pp. 60-61)

¹¹ Incorporated Administrative Agency National Consumer Affairs Centre of Japan, press release article, 6 September 2023: ‘Be warned about personally imported medicines and cosmetics! - A skin brightening cream purchased on an online shopping site causes severe skin damage’ (https://www.kokusen.go.jp/pdf/n-20230906_1.pdf. Last visited on 8 April 2024)

Kidston and offers to deliver these items to Japan.

Amazon claims that its brand protection policy includes protections for consumers who purchase brand items and that ‘product detail’, including product explanations and pictures, is vital information that needs to be provided upon registering a product¹². Therefore, Amazon emphasises that it has the right to take immediate action for protection if a listing is inaccurate.¹³

In the verdict regarding Amazon’s lawsuit brought against the Japanese Government, the court stated to Amazon that: ‘Consumers who consider purchasing can, in general, only obtain information by trusting the outline being displayed alongside the product.’¹⁴ It went on to state the following with respect to retailers selling on the internet: ‘In relation to the display of

¹² Product detail: this includes items such as title, brand, category, product explanation, and pictures. Consumers who consider purchasing can see this detailed information and check what the listed item is (Defendant’s Exhibit 12, p. 2)

¹³ ‘Amazon reserves the rights to terminate the transactions of service users immediately, refuse or limit access to the service, and take measures to limit access to items with inaccurate descriptions, inappropriate categorisation, are unlawful, and any other factor which is prohibited by the program policy applicable.’ (Defendant’s Brief (2), footnote 4)

¹⁴ Court’s verdict delivered on 15 November 2019, 2018 (Gyo-U) Case No. 30, the action for revocation of the Order for Action, p. 81 (https://www.courts.go.jp/app/files/hanrei_jp/404/089404_hanrei.pdf. Last visited on 2 April 2024)

information for the item in question being sold on the internet by the retailers themselves, no legal provision exists for retailers such that they have no obligation to display the information complying with laws or are exempted from the obligation to display the information complying with laws'.¹⁵

With respect to cosmetics distributed in Japan (including imported sales), having been accredited by the Japan Fair Trade Commission and the Head of the Consumer Affairs Agency, entrepreneurs or trade associations voluntarily set their own rules for matters in relation to display or premiums as the Code of Fair Competition - this is based on the rules and regulations of Article 31 of the Act against Unjustifiable Premiums and Misleading Representations. These rules are set to protect the interests of consumers, such as accurately providing information necessary to choose products and services, and stipulating what should be displayed in advertisements and catalogues. Hence, these organisations state that they have an important role

¹⁵ Court's verdict delivered on 15 November 2019, 2018 (Gyo-U) Case No. 30, the action for revocation of the Order for Action, p. 105
(https://www.courts.go.jp/app/files/hanrei_jp/404/089404_hanrei.pdf. Last visited on 2 April 2024)

to play in creating an environment in which consumers can choose better goods and services safely. Nevertheless, these are rules established voluntarily – they are not applicable to entrepreneurs who do not participate in the Code. However, to address misleading representation or unjustifiable premiums conducted by entrepreneurs who do not participate, if the information necessary for choosing goods and services is not provided accurately and does not serve to protect the interests of consumers, the Consumer Affairs Agency takes measures based on the rules set out in the Act against Unjustifiable Premiums and Misleading Representations. The Consumer Affairs Agency states that it imposes strong punishments for such conduct, except for entrepreneurs or trade associations who fall under the Code of Fair Competition (Article 31, paragraph (5) of Act against Unjustifiable Premiums and Misleading Representations) which does not apply the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Antitrust Law).

That is to say, entrepreneurs which sell imported body care products subject to the PMD Act should display product information to ensure consumer protection. In fact, yodobashi.com, which sells Cath Kidston body care

product ranges and is a competitor of Amazon, displays product details that are compliant with the PMD Act to enable consumers to make a purchase decision based on the information provided [Reference Material 6].

[Reference Material 6]

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CK ハンドクリーム
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【成分】水、セテアリルアルコール、セテアレス-25、グリセリン、トリカプリル酸/カプリン酸)グリセリル、シア脂、香料、カカオ脂、フェノキシエタノール、エチルヘキシルグリセリン、コーンスターチ、アラントイン、(アクリレーツ/アクリル酸アルキル(C10-30))クロスポリマー、TEA、酢酸トコフェロール、パンテノール、ベンジルアルコール、サリチル酸ベンジル、シトロネロール、ゲラニオール、ヘキシルシシナマル、リモネン、リナロール、ローソメチルイオン、II

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紙箱 チューブ、キャップ 未開封シール MADE IN CHINA

Amazon itself is conducting acts of torts which fall under the policy violations of the listings which should have been removed, and it is highly inappropriate for such a company taking this position to be running the Brand Registry. In Amazon.co.jp, those responsible for removing items listed by sellers as inaccurate and inappropriate are Amazon.com and their subordinate, the Legal Department of Amazon Japan. It is clearly unreasonable and impedes fair competition that no third party organisation exists which can claim acts of torts by Amazon and remove its listings.

Among sellers selling Cath Kidston items, Amazon.com (the US Amazon) targeted only the Claimant and removed a genuine Cath Kidston item from Amazon.co.jp which the Claimant had listed as parallel-imported to sell for the domestic market. They did so on the grounds that it constituted an Intellectual Property (IP) infringement (trademark violation), actions which contradict the Intellectual Property for Rights Owners on Seller Policies [Claimant Note: The Claimant had registered on Amazon.co.jp to sell only in Japan as Amazon claimed that they are the biggest online marketplace operator in 2013. She has never signed up for Global Selling which would allow her to sell on all Amazon websites worldwide. Amazon.com is claiming

there have been IP infringement complaints from abroad regarding the Claimant, who has never made any agreement to comply with laws applicable in countries other than Japan in order to sell worldwide].

[Excerpt from the Intellectual Property for Rights Owners on Seller Policies]

Location: If you are reporting infringement of a registered trademark or patent, your registered trademark or patent must be registered in the country where you are reporting the infringement. Amazon does not take action on intellectual property notices concerning registered trademarks or patents from countries other than the country for which takedown is requested. For example, if you have a trademark registered in Italy, and you ask Amazon to remove an ASIN from Amazon in the United States, Amazon will likely reject your notice.

Note: Abuse of the notice submission process, which includes but is not limited to impersonating another brand, tampering with product detail page language, and repeatedly reporting sellers who are not infringing, will not be tolerated. Amazon takes necessary action against ROs who are found to be abusive.

Parallel Import: In general, Amazon does not accept notices directed to parallel import claims in the United States as well as in Japan.

Amazon eliminated the parallel-imported item by asserting that the Claimant must obtain a license to sell under the brand Cath Kidston for said item (at the time she had purchased it in 2021) if she wanted Amazon to withdraw the Intellectual Property Infringement claim (trademark violation) against her. By claiming that an Intellectual Policy infringement claim would disappear from display after 180 days, Amazon continued to make

defamations consisting of false statements that hurt the Claimant and damaged her reputation. After the display disappeared, Amazon claimed that the Claimant should obtain either a license to sell from Cath Kidston or acquire some form of acceptance from Amazon which Cath Kidston themselves will accept. However, because listing a Cath Kidston item as 'parallel-imported' became an Intellectual Property infringement, the Claimant cannot sell the Cath Kidston items she currently has. Therefore, Amazon infringed the Claimant's rights to run a business legitimately on its website.