

The Problem of Imported Liquors with the Lot Identification Code intentionally deleted

May, 2022

Japan Wines and Spirits Importers' Association

What is a lot identification code ?

- o In the production industry, the production unit for collectively producing the same type of products is called a “lot”. For example, if 1,000 pieces are produced at the same time, this 1,000 pieces will be “a lot (1 lot)”.
- o “Lot” means a batch of sales units products produced, manufactured or packaged under practically the same conditions and can be considered to be of the same quality.



- o Producers accompany a code to each lot for product management such as quick product recall in the event of an accident and investigation of the cause. This code is called the “lot identification code”.
- o In Europe and other countries, it is mandatory to accompany by an indication on all foods including liquors.

What is the role of the lot identification code ?

- o In case of emergency event that there is a problem with the product, the producer can identify the problematic products and the range to be collected at an early stage by checking lot identification codes . In addition, producer can track process of production and distribution where the problem occurred, and get clues to investigate the cause of the problem.
- o For imported products, the importer will respond promptly through the lot identification code in cooperation with the producer.
- o But if the product doesn't have a lot identification code ... Not only will the problematic product not be recalled promptly, but the means and opportunities to investigate the cause will also be lost.
- o Unfortunately, we can see the imported liquors in Japan with the lot identification code intentionally deleted in Japan.

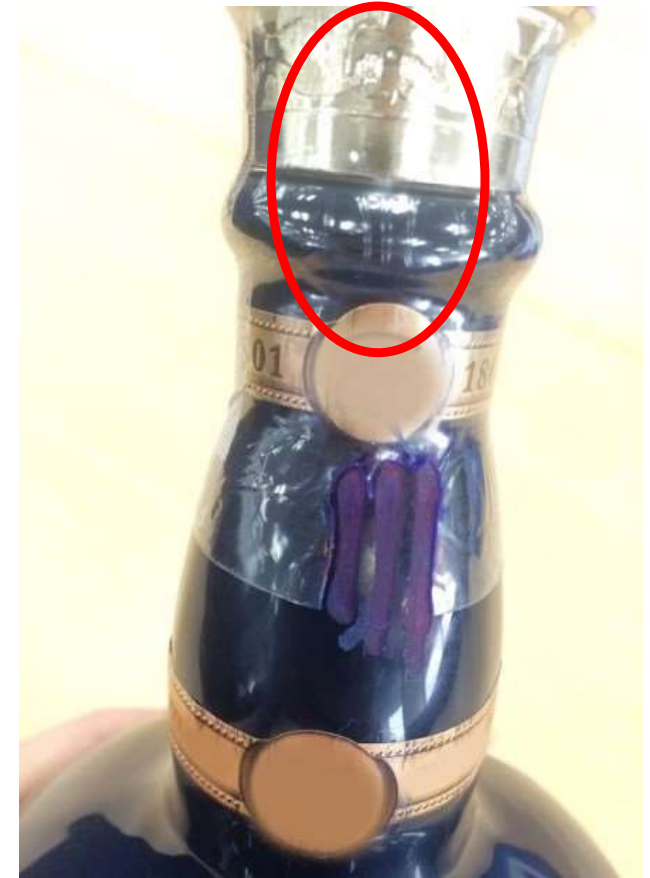
The lot identification code is extremely important information for quality control related to the safety and security of consumers. Only with the lot identification code can you deal with accidents and troubles.

Imported liquor with the lot identification code deleted(1)



The seal marks on the parts where a lot identification code has been deleted are ugly, creating an unsightly appearance that does not match the brand image. The luxury appearance of the product has been lost. The original product does not have such a seal.

Imported liquor with the lot identification code deleted(2)

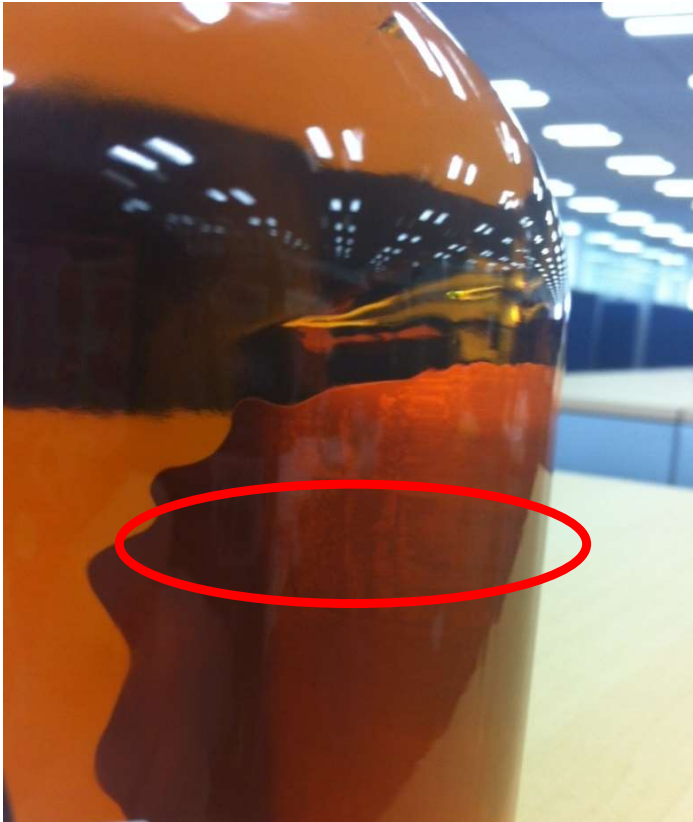
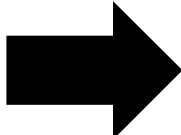


Some of the products with the lot identification code deleted have unknown distribution roots, and there are concerns about cork defects and quality deterioration (gas out, discoloration, flavor abnormalities) due to importer's poor management. You cannot enjoy the original taste and aroma.

Imported liquor with the lot identification code deleted(3)

before deleting code

after deleting code



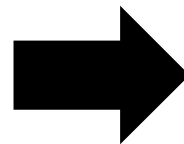
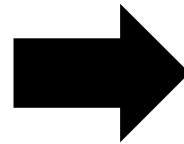
There is also a malicious example of removing the label once and next, deleting the lot identification code on the back of the label ...

Imported liquor with the lot identification code deleted (4)

before deleting code



after deleting code



The “IMPORTED” sticker and black sticker affixed to conceal the act of deletion do not exist in the original product. These are damaging the image of the product.

Imported liquor with the lot identification code deleted(5)

after deleting code ①



After deleting the code under the blue aluminum foil, it was re-fastened with similar colored tape. It doesn't look good and There is also anxiety about replacing the contents.

after deleting code ②



After deleting the code under the blue aluminum foil, it was re-packed with another new foil. There are many wrinkles that the original product does not have, and the appearance is spoiled.

Why do we need a law to regulate the distribution of liquors with the lot identification code deleted? (1)

- Accompanying lot identification code is mandatory by law in Europe, but not in Japan.
- For this reason, liquors with the lot identification code intentionally deleted are imported from EU countries to Japan, which has a large market.
- Furthermore some of these imported liquors have unknown distribution roots and have deteriorated quality or damaged packaging materials due to improper management. The purpose of deleting the lot identification code is to hide the distribution channels.



The distribution of liquors with the lot identification code deleted must be regulated by law in Japan.

Why do we need a law to regulate the distribution of liquors with the lot identification code deleted? (2)

A National Tax Agency notification states that distribution and sale of liquors with the lot identification code deleted is not desirable because it may damage consumers' trust in liquors and liquor industry. In addition, in the liquor sales management training, the problem of deleting the lot identification code has been lectured.

Unfortunately these are not legally binding and liquors with the lot identification code deleted are still being imported and sold in Japan.

In Europe, the accompaniment of the lot identification code is mandatory by law.

The United States does not require the lot identification code itself like Japan. But its deletion, falsification, and concealment are subject to penalties.



Legal restrictions are required for products with lot identification code deleted

What is the relevance between the deletion of lot identification code and trademark right?

The United States does not require the lot identification code itself, but like in EU, its deletion, falsification, and concealment are subject to penalties.



The deletion of the lot identification code is considered to be an infringement of trademark right. Because it would impair the “quality assurance function” of the trademark.



The deletion of the lot identification code is also problematic in terms of infringement of trademark right. .

Is it possible to develop American theory in Japan?

“Even in the interpretation of Japanese trademark law, it is possible to claim that the deletion of the lot identification code is infringement of trademark rights.”

By Prof. Katsuya Tamai

Prof. Katsuya Tamai of the University of Tokyo, an authority on intellectual property rights



— In the United States, the lot identification code is not required, but it is illegal to delete them, based on infringement of the trademark’s quality assurance function. In Japan as well, there are court judgements that recognize the quality assurance function of trademarks. **Is it possible to claim that the deletion of the lot identification code is infringement of trademark right. ?**

Prof. Tamai: **It is possible based on Supreme Court judgements.**

— In some cases of imported champagne with lot identification code deleted have deteriorated quality

Prof. Tamai: Serious producers and distributors have proper quality control based on the lot identification code and their efforts should be rewarded. The purpose of deleting the lot identification code is to hide the distribution channels. Some of products with lot the identification code deleted have unknown distribution channels, and there are concerns about quality deterioration due to improper management. It can be pleaded that such an act impairs the brand image.

Interpretation and court judgement of trademark right in Japan

☆ Trademark right

A trademark right is one of the intellectual property rights, and is the right to exclusively use a combination of characters, figures, symbols, colors, etc. to distinguish one's own product from other company's product. These will be protected as trademark right by application and registration with Japan Patent Office.

Three functions of trademark

- Source identification function: A function that correctly identifies one's own product and distinguishes it from other's product.
- **Quality assurance function:** **A function that raises the expectation that products with the same trademark will have the same quality.**
- Advertising function: A function that attracts customers based on the certain credit of the trademark, not individual products.



There is also a court judgement in Japan that parallel imports are illegal because of trademark infringement !

- February 27, 2003 the Supreme Court Judgement "Fred Perry case"
- April 27, 2010 Intellectual Property High Court Judgment "Converse Case"

Conditions for legality of parallel imports as stated by the Supreme Court ~~February 27, 2003 the Supreme Court Judgement "Fred Perry case"~~

It is trademark infringement for a person other than the trademark holder to import products with the same trademark as the registered trademark unless he or she gets permission. However, even the import of such goods can be interpreted as parallel imports of genuine goods because of lacking the substantial illegality of trademark infringement if the following conditions are met.

- (1) The trademark is legally attached by a foreign trademark holder or a person who has obtained a license from the trademark holder.
- (2) The trademark of an imported product is recognized as the same source as a registered trademark in Japan because the relevance between the foreign trademark owner and the Japanese trademark owner is the same or is considered to be legally or economically the same.
- (3) Since the trademark holder in Japan is in a position to directly or indirectly control the quality of the product, it is judged that there is substantially no difference between the imported product and the product to which the trademark holder in Japan attached the registered trademark. 抜



Conversely, parallel imports that do not meet these three conditions are illegal, and products with the lot identification code deleted are not in the quality control of trademark holders in Japan.

Parallel import of products with lot identification codes deleted is illegal because it does not meet condition (3) and is an infringement of trademark right.

Summary (1)

- Members of JAPAN WINES AND SPIRITS IMPORTERS ' ASSOCIATION are working day and night to provide safety and security and high qualitative imported liquors to consumers.
- A National Tax Agency notification states that distribution and sale of liquors with the lot identification code deleted is not desirable because it may damage consumers' trust in liquors and liquor industry . In the liquor sales management training, the problem of deleting the lot identification code has been lectured from 2017.
- Unfortunately these are not legally binding, so liquors with the lot identification code deleted are still being imported and sold in Japan.

Summary (2)

- The purpose of deleting the lot identification code is to hide the distribution channels. So some of these imported liquors have deteriorated quality or damaged packaging materials due to improper management.
- It's easy to imagine that consumers who buy such products will never get them again because they mistakenly think they are bad-tasting or dirty products.
- Regarding the problem of the deletion of the lot identification code, we will continue to appeal the need for legal restrictions from the viewpoint of infringement of trademark right, in addition to the safety and security of consumers.