

Judgment rendered on July 12,2000

1998 (Wa) 13353 Case of Seeking Damages

(Date of conclusion of oral argument: May 17, 2000)

Judgment

Plaintiff: Kabushiki Kaisha Nako International

Defendant: Yugen Gaisha Buruburu

Defendant: Abe Hatome Co., Ltd.

Main text

1. All of the plaintiff's claims shall be dismissed.
2. The court costs shall be borne by the plaintiff.

Facts and reasons

No. 1 The plaintiff's claims

The defendants shall each pay to the plaintiff 14,580,000 yen and money accrued thereon at the rate of 5% per annum for the period from June 25, 1998 to the date of completion of the payment.

No. 2 Outline of the case

In this case, the plaintiff demanded against the defendants compensation for damages, alleging that the defendants' act of importing and selling the goods that imitate the configuration of the goods manufactured by the plaintiff falls under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.

1. Facts on which the decision is premised (there are no disputes between the parties)

(1) Since around the beginning of June 1997, the plaintiff manufactured about 100,000 pieces of a mini game machine for a cat-dating simulation game stated in attached drawing (i) (hereinafter referred to as "Goods 1") based on an order from the defendant Abe Hatome Co., Ltd. (hereinafter referred to as the "Defendant Abe Hatome"), and sold them to it. Defendant Abe Hatome further sold them to the defendant Yugen Gaisha Buruburu (hereinafter referred to as "Defendant Buruburu"), who sold them in Japan.

(2) However, the defendants had another toymaker, located in Hong Kong, that is different from the plaintiff manufacture a mini game machine for a cat-dating simulation game stated in attached drawing (ii) (hereinafter referred to as "Goods 2") and imported and sold them in Japan from around late December 1997.

(3) Goods 1 and Goods 2 share the following basic configuration: [i] the front surface is shaped like a cat's paw and has four round nails on the upper part; [ii] the back surface is shaped like the back of a cat's paw; [iii] an approximately 2 cm² screen is arranged in the middle of the front surface while three game operation switches with an approximately 3mm diameter are arranged in a curved line on the lower part of the front surface; and [iv] the overall pattern has three

variations, i.e., a tiger pattern, pinto, and calico. Thus, the configuration of Goods 1 and that of Goods 2 are substantially identical.

2. Issues

1. Whether or not Goods 1 falls under the category of "another person's goods" as prescribed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act for the defendants.

(omitted)

No. 3 Court decision

1. Regarding Issue 1 (another person's goods)

(1) Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act prescribes that the act of assigning, leasing and importing, etc. goods imitating the configuration of "another person's goods" is an act of unfair competition. The abovementioned provision was stipulated for the purpose of regulating the act of imitating the configuration of goods without spending costs and labor. This enables the person who developed goods and puts the goods on the market by investing funds and labor to easily collect the spent costs during the necessary period of time (three years from the day on which the relevant goods was first sold) and thereby increases incentives for commercialization. Thus, the decision on whether or not the relevant person should be protected under said item should be made by examining whether or not the relevant person is someone who spent costs and labor in commercializing the goods and putting them on the market. Needless to say, if both X and Y bore the costs and labor by dividing them in commercializing the goods and putting them on the market, both of them may be protected against the act of imitation by a third party. However, the relevant goods will not fall under the category of "another person's goods" between X and Y, and thus the act of selling, etc. the goods cannot be regarded as an act of unfair competition.

As such, based on the abovementioned standpoint, this court will examine whether or not the defendants spent costs and labor for the commercialization of Goods 1.

(omitted)

(3) Based on the facts found above, this court will examine as follows.

As found above, in light of the following facts, it is appropriate to construe that the defendants are persons who were involved in the creation of Goods 1 by spending costs and labor in commercializing Goods 1: [i] In view of the process of commercialization of Goods 1, it is true that the plaintiff created the scenario of the game and presented the idea to make the external appearance of the game machine have the shape of a cat's paw. However, it is the

defendants who later created the external design, name, package design, and instruction manual of Goods 1, and the defendants also gave particular, detailed instructions thereafter in the process of creating a prototype; [ii] While the external design, package design, and name of the goods are important elements in the commercialization of game machines that affect the consumers' willingness to buy, the final decision on the contents and shape was made by the defendants; [iii] In this case, it was the defendants who almost exclusively bore the risk of collecting the costs by distributing 100,000 units of Goods 1, which are new to the market, and selling them.

The plaintiff alleges that Goods 1 are entirely the plaintiff's goods because the story of the game and configuration of representing a cat's paw were based on the plaintiff's idea. However, in light of the following facts, the plaintiff's allegation mentioned above cannot be accepted: [i] Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act is provided for the purpose of protecting the developer of the goods from the imitator but not for the purpose of protecting the idea itself; and [ii] the degree of the defendants' involvement in the commercialization of Goods 1 is as mentioned above.

As such, Goods 1 is not "another person's goods" for the defendants, and the defendants' act does not fall under the act of unfair competition as prescribed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.

2. Conclusion

As found above, all of the plaintiff's claims are found to be groundless without the need for making determinations on other issues.

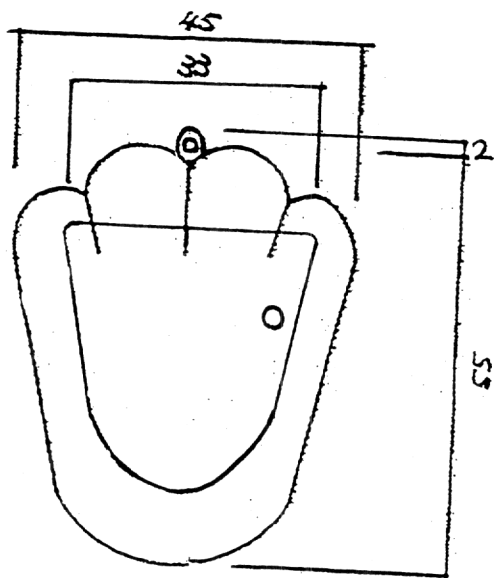
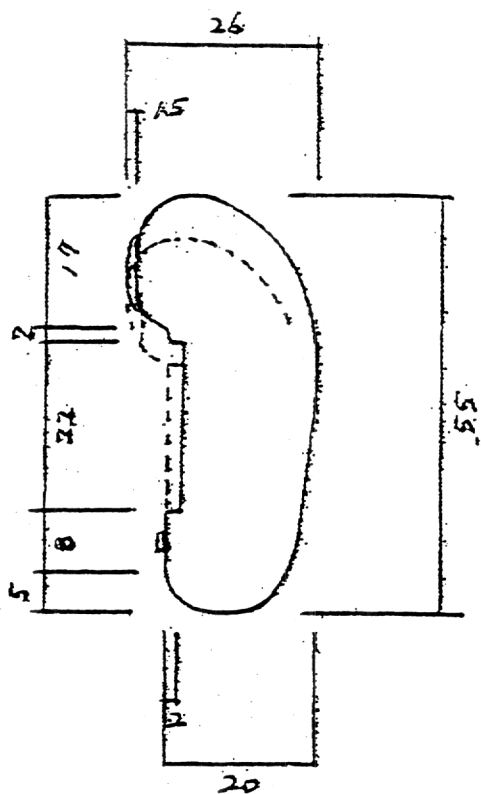
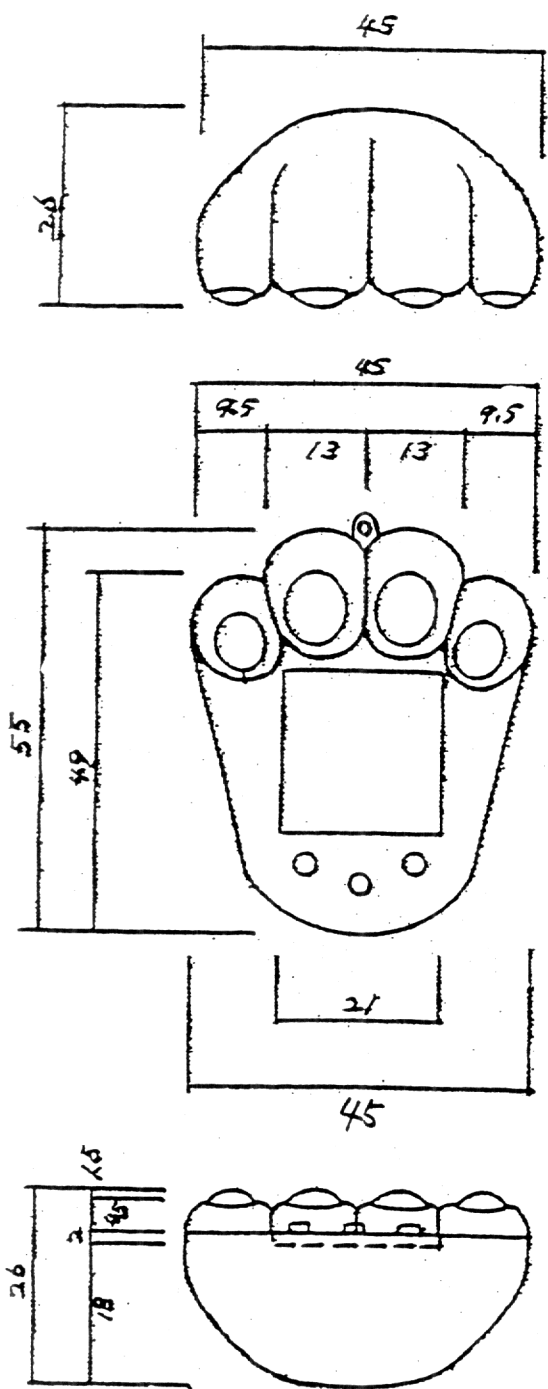
Tokyo District Court, 29th Civil Division

Presiding judge: IIMURA Toshiaki

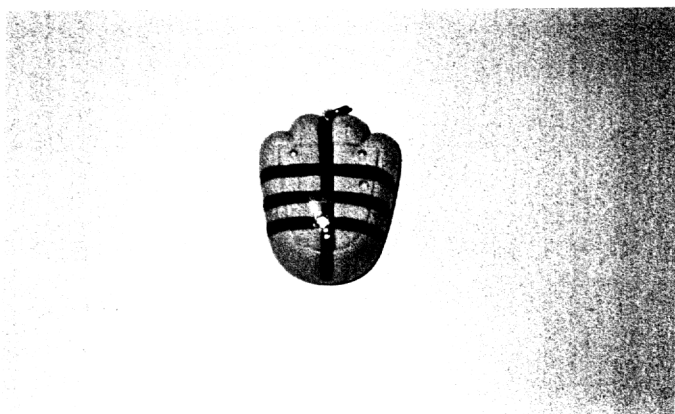
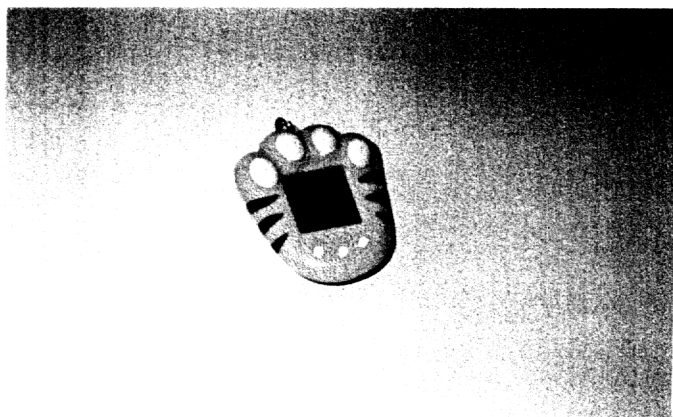
Judge: YAGI Kimiko

Judge: TANI Yuko

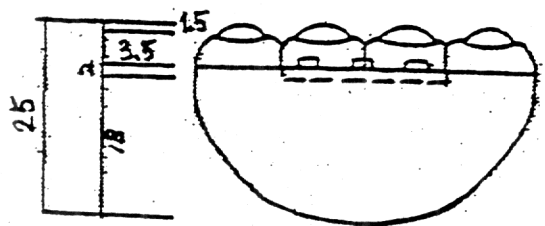
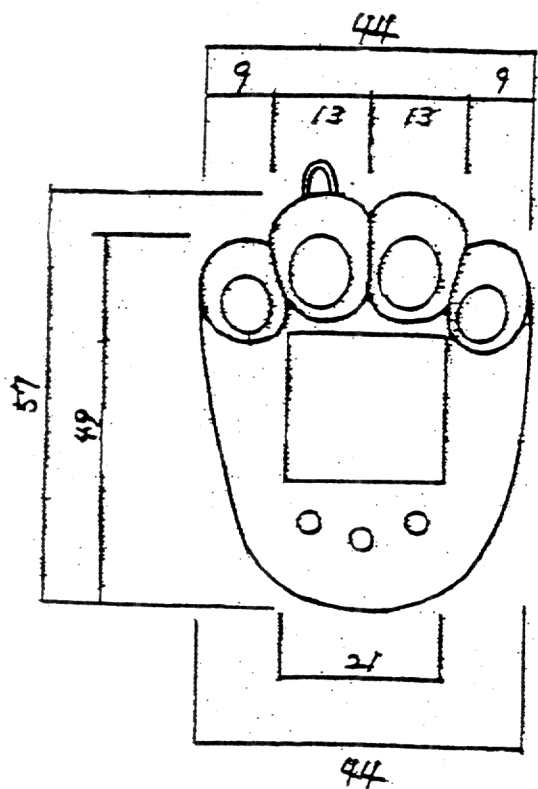
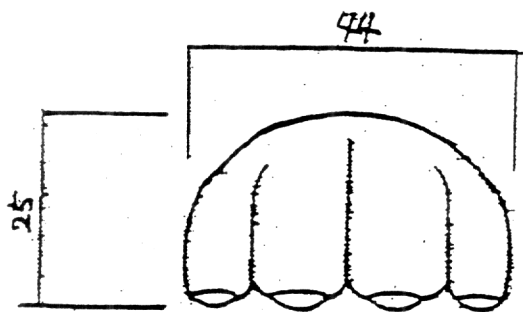
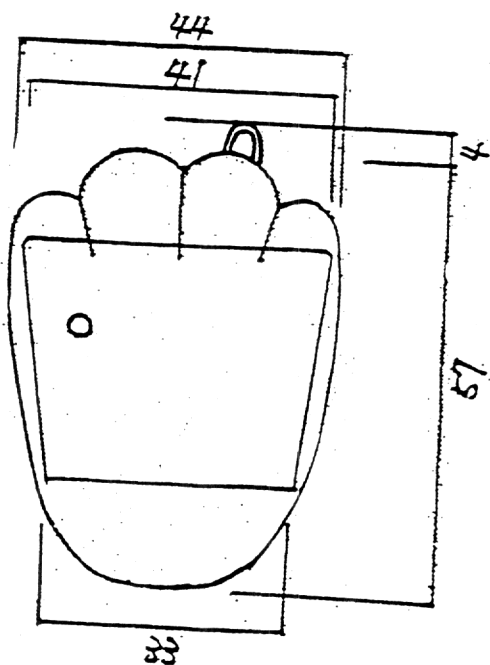
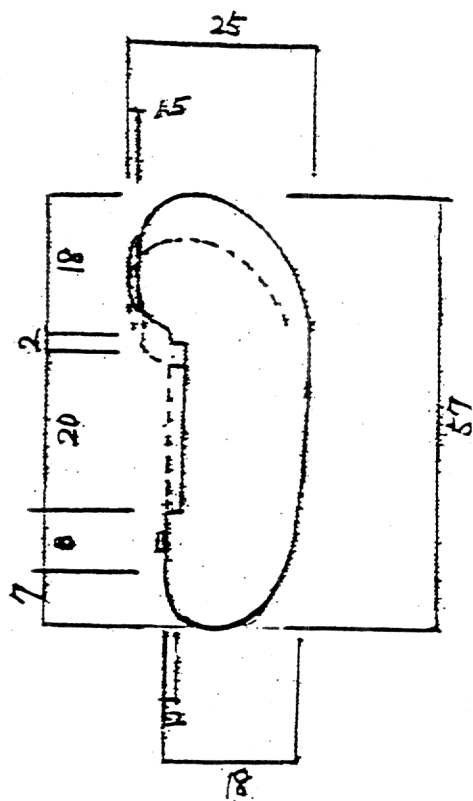
別紙図面(一)(別紙写真(一)のミニゲーム機)



別紙写真(一)



別紙図面(二) (別紙写真(二)のミニゲーム機)



別紙写真(二)

