Date	February 24, 1994	Court	Osaka District Court
Case number	1992 (Wa) 11250		

– A case in which the plaintiff claimed discontinuance of use of the mark used by the defendant by alleging against the defendant, who sells goods prepared by dividing the Goods sold by the plaintiff into small portions and repackaging the divided content in another bag, that the defendant's act of selling such goods constitutes infringement of the plaintiff's trademark right and the court found that the plaintiff's trademark right was infringed based on a finding that the defendant was using marks that are similar to the plaintiff's registered trademark in connection with the defendant's product that is identical with the designated goods in a manner that said marks fulfill the function of distinguishing one's own goods from another persons' goods, such as the source indication function and the quality indication function.

References: Article 25, Article 2, paragraph (3), Article 36, paragraph (1) and Article 37 of the Trademark Act

Number of related rights, etc.: Trademark No. 650648

Summary of the Judgment

The plaintiff, who holds a trademark right for a trademark whose essential part is found to be "MAGAMP" (the "Trademark"), is engaged in the import and sale of goods (the "Goods") carrying a trademark whose essential part is very similar to the Trademark in terms of appearance and pronunciation. The defendant purchases from a third party goods that have been prepared by dividing the Goods into small portions and repackaging them in small bags, or prepares goods by itself by dividing the Goods into small portions and repackaging them (the "defendant's product"), and has been selling such defendant's product, while handwriting on the packages thereof or on the advertisements on the store shelves a mark which is similar to the Trademark without permission from the plaintiff.

The plaintiff claimed against the defendant discontinuance of use of the mark used by the defendant based on Article 36, paragraph (1) of the Trademark by alleging that the defendant's act of selling the defendant's product constitutes infringement of the plaintiff's trademark right.

In this judgment, the court determined as follows and found that the act of using the defendant's mark in connection with the defendant's product constitutes an act of infringement of the trademark right in question (the "Trademark Right").

i. According to the provisions of Article 25, Article 2, paragraph (3), items (i), (ii) and (vii) and Article 37, item (i) of the Trademark Act, if a person other than the holder of

a trademark right "uses" a trademark similar to the registered trademark without authority in specific connection with goods in the manner that said trademark fulfills a trademark's function of distinguishing one's own goods from another persons' goods, such as the source indication function and the quality indication function, the act, even without affixing the trademark directly to the goods, constitutes infringement of the exclusive right of the holder of the trademark right to use the registered trademark even if said goods are genuine goods sold by the holder of the trademark right, let alone such person's act of affixing the trademark directly to goods that are identical with the designated goods without authority.

ii. The defendant is found to be using the defendant's marks that are similar to the Trademark in connection with the defendant's product that is identical with the designated goods in a manner that said marks fulfill the function of distinguishing one's own goods from another persons' goods, such as the source indication function and the quality indication function. Even if the defendant's product is merely a product that was prepared only by opening the Goods sold by the plaintiff and repackaging the content thereof in other bags, all of the defendant's acts of using the defendant's marks in connection with the defendant's product constitute infringement of the Trademark Right.

iii. From a substantive standpoint, packed chemical fertilizers, as in the case of the Goods, are highly likely to change in quality through the process if any person other than the plaintiff and the manufacturer, who have knowledge of their composition, chemical properties, and manufacturing methods, divides the content into small portions and repackages them. Moreover, chemical fertilizers are easily tampered with in said process. Therefore, if the defendant's act of selling the defendant's product were permitted, the reputation of the plaintiff, who is the holder of the trademark right, would be injured, and the interests of customers would also be damaged. Consequently, it can be concluded that the defendant's act of selling the defendant's product constitutes infringement of the Trademark Right.

Judgment rendered on February 24, 1994

1992 (Wa) 11250

Judgment

Indication of the parties: Omitted

Main Text

1. The defendant shall not use the marks described in (1) and (3) in the Second List attached to this judgment in connection with fertilizers.

2. The defendant shall pay to the plaintiff 1,563,392 yen and the amount accrued thereon at the rate of 5% per annum for the period from December 27, 1992 to the date of completion of the payment.

3. All the other plaintiff's claims shall be dismissed.

4. The court costs shall be divided into three, and the plaintiff shall bear one-third thereof and the defendant shall bear the remaining amount.

5. Only the part of this judgment where the plaintiff won the case may be provisionally executed.

Reasons

No. 1 Objects of claims

1. The defendant shall not use the marks described in the Second List attached to this judgment in connection with fertilizers.

2. The defendant shall not sell the plaintiff's fertilizer that have been sold in the package carrying the trademark described in (1) or (2) in the Third List attached to this judgment, either by removing or deleting said trademark or by removing or deleting said trademark and using another mark.

3. The defendant shall pay to the plaintiff 3,569,720 yen and the amount accrued thereon at the rate of 5% per annum for the period from December 27, 1992 (day following the day of service of the complaint) to the day of completion of the payment.

No. 2 Outline of the case

1. Facts

(1) Plaintiff's rights

The plaintiff holds the following trademark right (hereinafter referred to as the "Trademark Right"; the relevant registered trademark is referred to as the "Trademark"):

(i) Filing date: February 13, 1963 (1963-4972)

(ii) Date of publication of examined application: April 30, 1964 (1964-9544)

(iii) Registration date: August 21, 1964

(iv) Registration number: 650648

(v) Designated goods: Class 2: Fertilizers in the appended table of the Order for Enforcement of the Trademark Act prior to amendment by Cabinet Order No. 299 of 1991
(vi) Registered trademark: As described in the First List attached to this judgment
(vii) Date of registration of renewal: January 28, 1975 and September 17, 1984
(2) Goods sold by the plaintiff

The plaintiff concluded an agreement for exclusive sales in Japan with W.R. Grace & Co., a corporation in the United States, in relation to a delayed release chemical fertilizer for gardening (hereinafter referred to as the "Goods"), which is manufactured in the United States and is put into an approx. 22-kilogram (50-pound) big bag carrying the trademark (hereinafter referred to as the "Plaintiff's Original Trademark") described in (1) or (2) in the Third List attached to this judgment that is very similar to the Trademark in the essential part "magAmp" in terms of appearance and pronunciation and is recognized as identical with the Trademark in relation to Article 50, paragraph (1) of the Trademark Act. Based on said agreement, since around 1964, the plaintiff has imported the Goods from said corporation and has sold them wholesale to distributors across Japan as professional-use goods for producers, while maintaining said package as it is and affixing an importer's assurance label indicating components, weight, etc. under the Fertilizer Regulation Act to the package. At the same time, for some of the Goods, the plaintiff has sold them wholesale to distributors across Japan under the trade name of "マグアンプ K" as home gardening goods for general consumers by conducting the following procedures at its own plant: opening said big bag, dividing the content thereof into small portions, specifically, five kinds of large- and middle-granule products, respectively (70 g, 200 g, 500 g, 1 kg, and 3 kg; however, 200 g product is only available for the middle-granule product), putting the divided content into small plastic bags and repackaging said plastic bags in paper packaging boxes, and affixing the following marks to these boxes: the mark described in (2) in the Second List attached to this judgment (hereinafter the mark affixed to the goods sold by the plaintiff is referred to as "Plaintiff's Mark 2" and the mark affixed to the defendant's small-portion product is referred to as "Allegedly Infringing Mark 2"), which is similar to the Trademark in the essential part, "マグアンプ," in terms of pronunciation; and the mark described in (3) in said list (hereinafter referred to as "Plaintiff's Mark 3"), which is identical with the Trademark in the essential part, "magAmp"(hereinafter said small portions are collectively referred to as the "Plaintiff's Small-Portion Product"; incidentally, the Plaintiff's Small-Portion Product containing 500 g are sometimes referred to as the "Plaintiff's Small-Portion Product" without special note). The share of マグアンプ K (the Goods and the Plaintiff's Small-Portion Product) in the market for mineral fertilizers in Japan for the period from fiscal 1989 to 1991 was over 10%, and its annual sales reached approximately 500,000,000 yen.

(3) Defendant's acts

(i) Sale of the defendant's small-portion product

The defendant has its store in Kumamoto City and runs a retail business of selling living organisms and materials for gardening. Since 1990 at the latest, the defendant has purchased from Yugen Kaisha Goto Sangyo (hereinafter referred to as "Goto Sangyo") goods that Goto Sangyo prepared by opening a big bag of the Goods, dividing the content thereof into small portions (1 kg, 500 g, 200 g, etc.) and repackaging the divided content in a small transparent plastic bag, and sold such repackaged goods, or has purchased the Goods from Goto Sangyo or at the flower market, prepared goods by dividing the Goods into small portions and repackaging them, and has then sold such repackaged goods (hereinafter said small portions are collectively referred to as the "Defendant's Small-Portion Product"; the defendant is now selling the Defendant's Small-Portion Product containing 500 g alone, and the Defendant's Small-Portion Product containing 500 g is sometimes referred to as the "Defendant's Small-Portion Product" without special note). The defendant sells these goods over the counter in its store as a business.

(ii) Use of a mark similar to the Trademark in connection with the Defendant's Small-Portion Product

The defendant is using a mark similar to the Trademark in selling the Defendant's Small-Portion Product without the plaintiff's permission, in the following manner.

[1] At the beginning of the sale, the defendant sold the following Defendant's Small-Portion Products by putting them on the store shelve in its store: the Defendant's Small-Portion Product purchased from Goto Sangyo that were prepared by simply repackaging a small portion of the Goods in a small transparent plastic bag originally carrying no mark and affixing to the plastic bag a label (seal) exhibiting the mark described in the Fourth List attached to this judgment (hereinafter referred to as "Allegedly Infringing Mark 4"), which is similar to the Trademark in the essential part "マグアンプ" in terms of pronunciation and is very similar to Plaintiff's Mark 2 (identical with Allegedly Infringing Mark 2), or the Defendant's Small-Portion Product that the defendant prepared by repackaging a small portion of the Goods in a small transparent plastic bag originally carrying no mark and directly handwriting on the bag the mark described in (1) in the Second List attached to this judgment (hereinafter referred to as "Allegedly Infringing Mark 1"), which is similar to the Trademark in the essential part "マグアンプ" in terms of pronunciation.

[2] After receiving the warning letters dated August 12, 1991 and September 13 of the same year from the plaintiff, the defendant ceased to commit the act mentioned in [1] above, and started selling the Defendant's Small-Portion Product by displaying many bags of the Defendant's Small-Portion Product, which the defendant prepared by repackaging the Goods in a small transparent plastic bag carrying no mark, on the display wagon in the defendant's store.

When selling these products, the defendant attached a schedule of prices, in which prices are handwritten ((for example, "マグアンプ K (identical with Allegedly Infringing Mark 1), マグアンプ 500 g: 880 yen")), to said display wagon, and posted similar home-prepared point-of-purchase advertising on the store shelves and cash register table, etc.

[3] After receiving the warning letter dated July 15, 1992 (Exhibit Ko 5) from the plaintiff, the defendant slightly changed the act mentioned in [2] above, and started selling the Defendant's Small-Portion Product by putting many bags of the Defendant's Small-Portion Product, which the defendant prepared by repackaging the Goods in small transparent plastic bags carrying no mark, alone in a pedestaled bowl-shaped pottery plant pot and a plastic planter, to make that these bags stand out, and presenting a schedule of prices, on which prices were handwritten (for example, "マグアンプ K (identical with Allegedly Infringing Mark 1): Small portion of the original bag: 500 g: 880 yen; マグアンプ K (500 g): 880 yen for one bag and 1,480 yen for two bags), in and near those display containers, while also displaying the Goods between said pedestaled bowl-shaped pottery plant pot and said planter, without making any special arrangement, in a manner that customers could see the Plaintiff's Original Trademark which is affixed to the surface of the big packaging bags (the essential part of the Plaintiff's Original Trademark is identical with that of the mark described in (3) in the Second List attached to this judgment [hereinafter referred to as Allegedly Infringing Mark 3"]; the marks mentioned above which are used by the defendant are collectively referred to as the "Allegedly Infringing Marks"). This situation is continuing even at present (hereinafter the act of selling the Defendant's Small-Portion Product, including the manner of sales, is merely referred to as the "Sale of the Defendant's Small-Portion Product").

(iii) Sale of the Plaintiff's Small-Portion Product

Separately from the Defendant's Small-Portion Product, the defendant also displays and sells the Plaintiff's Small-Portion Product in a fine paper packaging box, in the same manner as the goods of other companies. The sales price of the Plaintiff's Small-Portion Product is 980 yen, which is the plaintiff's suggested retail price.

2. Outline of claims

(1) Suspension of use of the marks described in the Second List attached to this judgment under Article 36, paragraph (1) of the Trademark Act on the grounds that the defendant's act of selling the Defendant's Small-Portion Product mentioned in 1.(3)(i) and (ii) above constitutes the infringement of the Trademark Right (1. in "Objects of claims")

(2) Suspension of said defendant's act under Article 1, paragraph (1), items (i) and (v) of the Unfair Competition Prevention Act on the grounds that said act constitutes an act of creating confusion with another person's goods set forth in item (i) of said paragraph and an act of misrepresenting information as to the quality, contents, etc. of the goods set forth in item (v) of

said paragraph (2. in "Objects of claims")

(3) Compensation for damage of 3,569,720 yen which was incurred by the plaintiff due to said defendant's act under Article 709 of the Civil Code or Article 1-2, paragraph (1) of the Unfair Competition Prevention Act ([1] damage to business in the amount equivalent to the profits which the defendant gained from the Sale of the Defendant's Small-Portion Product through application or analogical application of Article 38, paragraph (1) of the Trademark Act, [2] damage from injury to reputation, and [3] partial amount in the total amount of damage for attorney's fees; 3. in "Objects of claims")

3. Issues

(1) Whether the claim for an injunction is appropriate: that is, [1] whether the defendant's act of using the Allegedly Infringing Marks, which are similar to the Trademark, in connection with the Defendant's Small-Portion Product which was prepared by dividing the Goods sold by the plaintiff into small portions and repackaging them constitutes infringement of the Trademark Right; [2] whether said defendant's act constitutes an act of creating confusion with another person's goods set forth in Article 1, paragraph (1), item (i) of the Unfair Competition Prevention Act or an act of misrepresenting information as to the quality, contents, etc. of the goods set forth in item (v) of said paragraph

(2) Whether the claim for damage is appropriate: that is, if the claim mentioned in (1) above is found to be appropriate, whether there is damage incurred by the plaintiff that should be compensated for by the defendant as well as the amount of the damage

(omitted)

No. 4 Determinations on the issues

1. Issue 1 (whether the claim for an injunction is appropriate)

(1) Regarding the allegation of infringement of the trademark right

Article 25 of the Trademark Act provides that "The holder of trademark right shall have an exclusive right to use the registered trademark in connection with … designated goods." Article 2, paragraph (3) of said Act provides that the "use" of a registered trademark that the holder of the trademark right is exclusively entitled to use shall include not only the act of "affixing a mark to goods or packages of goods" (item (i)) but also the act of "assigning, delivering, displaying for the purpose of assignment or delivery, or importing goods or packages of goods to which a mark is affixed" (item (ii)) and the act of "displaying or distributing advertisement materials, schedule of prices or transaction documents relating to goods to which a mark is affixed" (item (vii)). In addition, Article 37, item (i) of said Act provides that the "use of a trademark similar to a registered trademark in connection with the designated goods" shall be

deemed to constitute infringement of the trademark right. Therefore, if a person other than the holder of a trademark right "uses" a trademark similar to the registered trademark without authority in specific connection with goods in the manner that said trademark fulfills a trademark's function of distinguishing one's own goods from other persons' goods, such as the source indication function and the quality indication function, even without directly affixing the trademark to the goods, the act constitutes infringement of the exclusive right of the holder of the trademark right to use the registered trademark even if said goods are genuine goods sold by the holder of the trademark right, let alone such person's act of affixing the trademark directly to goods that are identical with the designated goods without authority.

Looking at this point in relation to this case, as determined above (No. 2, 1.(3)(i) and (ii)), the defendant has sold the Defendant's Small-Portion Product over the counter in its store as a business since 1990 at the latest. In selling such Defendant's Small-Portion Product, the defendant committed the following acts without the plaintiff's permission. [1] At the beginning of the sale, the defendant sold the following Defendant's Small-Portion Products by putting them on the store shelve in its store: the Defendant's Small-Portion Product that was prepared by simply repackaging a small portion of the Goods in a small transparent plastic bag originally carrying no mark and affixing to the plastic bag a label (seal) exhibiting Allegedly Infringing Mark 4 that is similar to the Trademark, or the Defendant's Small Portion Product prepared by repackaging a small portion of the Goods in a small transparent plastic bag originally carrying no other mark, and handwriting on the plastic bag Allegedly Infringing Mark 1 that is similar to the Trademark. [2] After receiving the warning letters dated August 12, 1991 (Exhibit Ko 9) and September 13 of the same year (Exhibit Ko 10) from the plaintiff, the defendant ceased to commit the act mentioned in [1] above, and started selling the Defendant's Small-Portion Product by displaying many bags of the Defendant's Small-Portion Product, which were prepared by repackaging the Goods in a small transparent plastic bag carrying no mark, on the display wagon in its store, attaching a schedule of prices, on which prices are handwritten (for example, "マグアンプ K (identical with Allegedly Infringing Mark 1), マグアンプ 500 g: 880 yen," on said display wagon, and posting similar home-prepared point-of-purchase advertising on the store shelve and cash register table, etc. [3] After receiving the warning letter dated July 15, 1992, from the plaintiff, the defendant slightly changed the act mentioned in [2] above, and started selling the Defendant's Small-Portion Product by putting many bags of the Defendant's Small-Portion Product, which were prepared by repackaging the Goods in a small transparent plastic bag carrying no mark, alone in a pedestaled bowl-shaped pottery plant pot and a plastic planter to make these bags stand out, and presenting a schedule of prices, on which prices are handwritten (for example, "マグアンプ K (identical with Allegedly Infringing Mark 1): Small portion of the original bag: 500 g: 880 yen; マグアンプ K (500 g): 880 yen for one

bag and 1,480 yen for two bags"), in and near those display containers, while also displaying the Goods between said pedestaled bowl-shaped pottery plant pot and said planter in a manner that customers can see the Plaintiff's Original Trademark that is similar to the Trademark, which is affixed to the surface of the big packaging bags (the essential part of the Plaintiff's Original Trademark is identical with that of Allegedly Infringing Mark 3). This situation is continuing even at present.

In that case, the defendant is deemed to be using the Allegedly Infringing Marks that are similar to the Trademark in connection with the Defendant's Small-Portion Product that is identical with the designated goods (fertilizers) in a manner that said marks fulfill the function of distinguishing one's own goods from other persons' goods, such as the source indication function and the quality indication function. Even if the Defendant's Small-Portion Product is merely a product that was prepared only by opening a big bag of the Goods sold by the plaintiff and repackaging the content thereof in another bag, there is no choice but to say that all of the defendant's acts of using the Allegedly Infringing Marks in connection with the Defendant's Small-Portion Product constitute infringement of the Trademark Right.

In addition, from a substantive standpoint, chemical fertilizers in a bag, such as the Goods, are highly likely to change in quality through the process wherein a person other than the plaintiff and the manufacturer, who have knowledge of their composition, chemical properties, and manufacturing methods, divides the content of the bag into small portions and repackages them. Moreover, chemical fertilizers are easily tampered in said process. Therefore, if the defendant's act of selling the Defendant's Small-Portion Product were permitted, the reputation of the plaintiff, who is the holder of the trademark right, would be injured, and the interests of customers would also be damaged. Consequently, there is no other choice but to say that the defendant's act of selling the Defendant's Small-Portion Product constitutes infringement of the Trademark Right.

Therefore, there is a reason for the plaintiff's claim for suspension of the use of Allegedly Infringing Marks 1 and 3 under Article 36, paragraph (1) of the Trademark Act on the grounds that the defendant's act of using said marks in connection with the Defendant's Small-Portion Product constitutes infringement of the Trademark Right. Incidentally, Allegedly Infringing Mark 2, for which the plaintiff seeks suspension of use, is recognized as similar to Allegedly Infringing Mark 4, which the defendant used in the past, but there is no fact that the defendant actually used Allegedly Infringing Mark 2. In addition, the defendant is also found to be unlikely to use Allegedly Infringing Mark 4 in the future in consideration of the changes in the defendant's manner of infringing the Trademark Right. Therefore, there is no justification for the plaintiff's claim for suspension of the use of Allegedly Infringing Mark 2.

(Regarding the defendant's allegations)

The defendant alleges as follows. [1] In dividing the Goods in small portions and repackaging them, the defendant neither processes nor replaces the content. Therefore, the content of the Defendant's Small-Portion Product is completely the same as that of the Goods sold by the plaintiff, and is the genuine goods. The defendant merely indicates to customers who see the Defendant's Small-Portion Product that the content of the Defendant's Small-Portion Product is the same as the content of the Goods sold by the plaintiff. Therefore, even if the defendant's act of using the Allegedly Infringing Marks in connection with the Defendant's Small-Portion Product constitutes the "use" of the Allegedly Infringing Marks as a matter of form, it is substantially the use for a justifiable ground and is not illegal, and it thus does not constitute infringement of the Trademark Right. [2] The plaintiff itself does not manufacture the Goods in Japan, but it merely imports from the United States the Goods that were put in a 22-kg big bag and packaged, and sells the Goods in the original package for professional use, while selling the Plaintiff's Small-Portion Product, which was prepared by dividing the Goods into small portions, putting them in small bags, and repackaging them, for general consumers. Therefore, the goods for professional use can never be subjected to stringent quality control as alleged by the plaintiff, and it is truly questionable whether such stringent quality control is actually conducted for the Plaintiff's Small-Portion Product that is offered for general consumers. In the first place, chemical fertilizers, such as the Goods, absorb moisture when they are put into the soil, and their components dissolved in the water are absorbed by plants and become nutrients. Thus, they are not the type of goods whose component composition changes and quality and properties deteriorate due to absorbing moisture. If the quality and properties of the Goods deteriorate as they absorb moisture, as alleged by the plaintiff, the Goods are of no use as a chemical fertilizer or would inevitably be criticized as inferior goods. Therefore, the defendant's act of selling the Defendant's Small-Portion Product does not impair any of the Trademark's functions of distinguishing one's own goods from other person's goods, the source indication function, the quality guarantee function, and the advertising function.

However, it is guaranteed by law that the holder of a registered trademark right has an exclusive right to use the registered trademark in connection with the designated goods (exclusive right) and the right to prohibit another person from using a mark similar to the registered trademark (prohibitive right) and that no third party can use these marks. This is because a registered trademark can exert its function of distinguishing one's own goods from other persons' goods, such as the source indication function and the quality guarantee function, only if it is lawfully used by the right holder. It is obvious that if an unauthorized person other than the right holder is permitted to use a registered trademark, the reputation of the right holder would be left in the hands of the unauthorized person, and as a result, the foundation of credibility for the registered trademark would be lost, in which case, in an abstract sense, the

reputation of the right holder would always be exposed to the risk of being damaged and the registered trademark would not be able to exert said function. Consequently, irrespective of whether the goods in question are genuine and whether the act of dividing the goods into small portions, etc. poses the risk of a change to the quality of the goods, if, during the distribution process of the goods, which the holder of the trademark right lawfully has put into the distribution process with the registered trademark affixed thereto, a person other than the holder of the trademark right divided the goods into small portions, put them in small bags and repackaged them without permission of the holder of the trademark right, and then put the repackaged goods into the distribution process again while using a trademark that is identical with or similar to the registered trademark, such act is nothing less than removing and deleting the registered trademark: which the holder of the trademark right put into the distribution process in the manner that it is lawfully linked with the designated goods, from the designated goods during the course of distribution without reason. Said act prevents the holder of the trademark right from exclusively using the registered trademark in connection with the designated goods and nullifies the function of the registered trademark as a sign indicating the goods in mid-course. It harms the interests of the holder of the trademark right who makes efforts for maintaining and improving the quality and credibility of the goods and is also likely to lead to deceiving the public in relation to the quality of the goods and the reputation of the seller and also harming the interests of consumers. Therefore, it must be said that said act constitutes infringement of the trademark right. In addition, the plaintiff itself also sells the Plaintiff's Small-Portion Product, which was prepared by dividing the Goods into small portions, putting them into small bags and repackaging them, and then affixing Plaintiff's Marks 2 and 3 that are similar to the Trademark to the paper packaging boxes. However, because there are the risks of tampering and changes in the composition when dividing granular fertilizers, such as the Goods, into small portions and repackaging them, the plaintiff, in selling the Goods and in dividing them into small portions and repackaging them as the Plaintiff's Small-Portion Product, is particularly paying careful attention as follows in order to maintain the quality of the Goods: [1] conducting the componential analysis of the content of the Goods on a regular basis and conducting the analytical survey of the components of the content again at the time of dividing the Goods into small portions and repackaging them as the Plaintiff's Small-Portion Product; [2] taking care that the Goods are not tampered with and establishing in its plant an exclusive manufacturing line, which is used only for dividing the Goods and repackaging them as the Plaintiff's Small-Portion Product; [3] installing air-conditioning equipment in the plant where the Goods are divided into small portions and repackaged as the Plaintiff's Small-Portion Product and suspending work if humidity in the plant becomes higher even with the air-conditioning on because if the content absorbs moisture, the granules are combined and

consolidated and become bigger or the composition of components changes due to chemical reactions, which results in the deterioration of the inherent quality and properties of the Goods; [4] eliminating the granules of the Goods which were broken during transportation or storage and became smaller in the cases where any such smaller granules are found during the process of opening the bag of the Goods, dividing the content into small portions, putting them in another bag, and repackaging them, so that the size of the granules of the small portions and that of the granules of the Goods would be the same; and [5] paying sufficient attention so that the weight of the small portions does not fall below the net weight indicated on the paper packaging box. Particularly taking into account all of these efforts made by the plaintiff, it is hard to say that the Defendant's Small-Portion Product, which was prepared by simply repackaging the Goods without paying attention to quality control as the plaintiff does, is identical with the content of the Goods. Therefore, in this regard, the defendant's use of the Allegedly Infringing Marks cannot be found to be substantially the use for a justifiable ground and not illegal. Consequently, all of the defendant's allegations are unacceptable.

(omitted)

Osaka District Court

Presiding judge: ANMAE Shigekazu

Judge: OZAWA Ichiro

Judge: ATA Asako