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<tr><td>Date</td><td>November 29, 2013</td><td rowspan="2">Court</td><td rowspan="2">Tokyo District Court,
40th Civil Division</td></tr>
<tr><td>Case number</td><td>2011 (Wa) 29184</td></tr>
<tr><td colspan="4">– A case in which, with regard to the provision and delivery of a game by the defendant on social networking services, the court ruled that said game cannot be regarded as the reproduction or adaptation of the game that is provided and delivered by the plaintiff, nor is the aforementioned act of the defendant found to constitute unfair competition as set forth in Article 2, paragraph (1), items (i) to (iii) of the Unfair Competition Prevention Act.</td></tr>
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The plaintiff, who provides and delivers a game using professional baseball cards as its subject (the "Plaintiff's Game") on social networking services, asserts that the defendant, who provides and delivers a game on the same subject (the "Defendant's Game"), reproduces or adapts the Plaintiff's Game and makes automatic public transmissions thereof and thereby infringes the plaintiff's copyright (right of reproduction, right of adaptation and right of public transmission). The plaintiff further asserts that the images and composition of the Defendant's Game are identical or similar to the images and composition of the Plaintiff's Game, which represent a well-known or famous indication or configuration of goods or business, and therefore said act of the defendant constitutes unfair competition as prescribed in Article 2, paragraph (1), items (i) to (iii) of the Unfair Competition Prevention Act. Based on these assertions, the plaintiff principally seeks an injunction against the defendant to suspend delivery of the Defendant's Game (public transmission and making the game transmittable) under Article 112, paragraph (1) of the Copyright Act or Article 3 of the Unfair Competition Prevention Act, and claims compensation for damage based on a tort of infringement of the copyright or payment of damages under Article 4 of the Unfair Competition Prevention Act. Alternatively, the plaintiff asserts that the provision and delivery of the Defendant's Game by the defendant constitutes a general tort, illegally infringing the business interests of the plaintiff that it could have enjoyed by providing and delivering the Plaintiff's Game, and seeks against the defendant the payment of damage as a claim for compensation for damage based on a tort. The points at issue in this case are diversified, among which, regarding whether the provision and delivery of the Defendant's Game constitutes an infringement of the plaintiff's copyright, the court first compared the Plaintiff's Game and the Defendant's Game for each of their game scenes, such as "senshu gacha (selection of players)," "game," "players' cards," to examine individual expressions and the selection and layout of the screen, and concluded that although there are some common points, these

points are nothing more than ideas or are ordinary expressions lacking creativity and that the Defendant's Game cannot be regarded as the reproduction or adaptation of the Plaintiff's Game. Even examining the games as a whole, many differences were found in specific expressions, and the details of the common points asserted by the plaintiff are merely explanations of how to play the games as SNS games using professional baseball cards as their subjects, a method to conduct the games, or game rules and nothing more than ideas in themselves. Even if these common points are to be considered as some kind of expression, characteristic points or originality cannot be found in the Plaintiff's Game under constraints inherent in these games, and, therefore, the Defendant's Game cannot be regarded as the reproduction or adaptation of the Plaintiff's Game. Based on these findings, the court denied the defendant's infringement of the plaintiff's copyright.

With regard to the progress in the Plaintiff's Game, the images of the game, and the mode of changes accompanying said progress, the court ruled that none of these matters can be recognized as a well-known indication of goods or business or a famous indication of goods or business and that neither the combination of developments of the screen display nor the indications on the screen at each of the aforementioned game scenes constitute the "configuration" as prescribed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act. Based on these findings, the court determined that the defendant's act does not constitute the aforementioned unfair competition. Regarding the plaintiff's alternative claim, the court determined that the aforementioned act of the defendant does not constitute a general tort.