

Date	August 21, 2014	Court	Osaka District Court, 21st Civil Division
Case number	2013 (Wa) 7604		
– A case in which the court upheld the plaintiff's claims for an injunction against the sale, etc. of the defendant's goods and disposal thereof (Article 3, paragraphs (1) and (2) of the Unfair Competition Prevention Act) as well as its claim for damages against the defendant (Article 4 and Article 5, paragraph (2) of said Act), on the grounds of the defendant's imitation of the configuration of the plaintiff's goods (Article 2, paragraph (1), item (iii) of said Act).			

Summary of the Judgment

1. The plaintiff filed this action to seek an injunction against the sale, etc. of the defendant's goods and disposal thereof as well as compensation for damages, alleging that the defendant's goods imitate the configuration of the plaintiff's goods.

The plaintiff's goods are a stuffed bear with the following function: when the stuffed bear is spoken to with the power on, it immediately moves its head, etc. up and down while reproducing the words spoken to it, by means of a device that is built into its trunk. The defendant alleged that the configuration of the plaintiff's goods is common as a configuration of a stuffed bear and does not fall under a configuration that should be protected. The defendant also alleged that the plaintiff's goods and the defendant's goods are not substantially identical with each other.

2. In this judgment, the court ruled as follows: The plaintiff's goods were made based on the plaintiff's successful product, which is a stuffed bear with curled long hair, by adding changes to the configuration of said stuffed bear and by building the aforementioned reproduction device therein; therefore, the configuration of the plaintiff's goods cannot be considered to be a common configuration in light of conventional configurations, etc. of stuffed bears. In addition, the court found that the plaintiff's goods and the defendant's goods are very similar to each other in terms of both the entire configuration and the specific configuration and are thus substantially identical with each other. Thereby, the court affirmed the imitateness of the defendant's goods in consideration of the fact that the defendant had purchased the plaintiff's goods and sold them wholesale to sales outlets in the past, the fact that the defendant had advertised the defendant's goods as an alternative to the plaintiff's goods, and the fact that the configurations and the number, etc. of the pattern papers of the defendant's goods are almost identical with those of the plaintiff's goods.

3. Regarding the amount of damages, the court presumed the defendant's profit, which was calculated based on the actual selling price of the defendant's goods and on the

premise of the amount of profit calculated by deducting cost price, tax, etc., as damages suffered by the plaintiff pursuant to Article 5, paragraph (2) of said Act.

Judgment rendered on August 21, 2014, the original received on the same date, court clerk

2013 (Wa) 7604 Case of Seeking Injunction, etc. against Act of Unfair Competition

Date of conclusion of oral argument: June 9, 2014

Judgment

Plaintiff: Kabushiki Kaisha Yamani

Defendant: HAPPY COMPANY Co., Ltd.

Main text

1. The defendant shall not sell the goods specified in Attachment 2.
2. The defendant shall not advertise for the sale of the goods specified in Attachment 2.
3. The defendant shall destroy the goods specified in Attachment 2.
4. The defendant shall pay the plaintiff 26,538,170 yen as damages and delay damages accrued thereon at a rate of 5% per annum from August 9, 2013, until the date of full payment.
5. Any other claims of the plaintiff shall be dismissed.
6. The court costs shall be divided into three portions, two of which shall be borne by the defendant, while the remaining one shall be borne by the plaintiff.
7. Only paragraph 4 of this judgment may be provisionally executed.

Facts and reasons

No. 1 Claims

1. The same as paragraphs 1 to 3 of the main text above.
2. The defendant shall pay the plaintiff 37,400,000 yen as damages and delay damages accrued thereon at a rate of 5% per annum from August 9, 2013, until the date of full payment.

No. 2 Outline of the case

The plaintiff alleged that the defendant's goods specified in Attachment 2 (Product name: ハッピー★ベアー, Happy★Bear; JAN Code: 4582302052773; Colors (1) Pink, (2) Beige, (3) Brown; These goods are hereinafter referred to as "Defendant's Goods (1), etc. by color. Defendant's Goods (1) to (3) shall be collectively referred to as the "defendant's goods") were produced by imitating the configuration of the plaintiff's goods specified in Attachment 1 (Product name: シュエッティーベア, Chouettie Bear: マネしておしゃべりぬいぐるみ (Stuffed Bear Cub Imitating Your Speech) Ver. 5; JAN Code: 4994793049468; These goods are hereinafter referred to as the "plaintiff's

goods"). The plaintiff also alleged that the defendant's act of selling defendant's goods constitutes an act of unfair competition specified in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act. The plaintiff sought an injunction against the defendant's act of selling or otherwise handling the defendant's goods and demanded destruction thereof under Article 3, paragraphs (1) and (2) of said Act and demanded payment of damages under Article 5, paragraph (2) of said Act and also demanded payment for the attorneys' fee and delay damages.

1. Facts based on which determinations are made

The following facts are undisputed by the parties or can be easily proven by the following evidence or the entire import of the oral argument.

(1) Parties concerned

The plaintiff is a stock company established for the purpose of manufacturing and selling household or industrial plastic products and the metallic molds thereof and selling daily necessities and miscellaneous goods such as metal goods, household utensils, and stationery supplies. The defendant is a stock company established for the purpose of manufacturing, processing, and selling food products and selling souvenirs for tourists.

(2) Plaintiff's goods

The plaintiff developed a stuffed bear cub that does not have a speech replay function and made a public announcement in September 2010, and started selling it under the product name "シュエッティーベア" (Chouettie Bear). The plaintiff diversified the aforementioned stuffed animal product and developed a product with a speech replay function. From December 2011, the plaintiff started manufacturing and selling the product under the product name "シュエッティーベア, Chouettie Bear: マネしておしゃべりぬいぐるみ" ("Yamani Goods"). In November 2012, the plaintiff granted an exclusive license to another company. From December 2012, the plaintiff started manufacturing and selling a stuffed animal with a new appearance, to which a speech replay function had been added under the product name "シュエッティーベア, Chouettie Bear: マネしておしゃべりぬいぐるみ Ver. 2" (any versions of the products after Ver. 2 shall be collectively referred to as "Yamani Goods 2"). Subsequently, the plaintiff continued manufacturing and selling this product, changing the external color thereof and the accessories attached thereto (scarf, bow tie, hat, ribbon, etc.). From January 2013, the plaintiff started manufacturing and selling the plaintiff's goods specified in Attachment 1, i.e., Ver. 5 of Yamani Goods 2 (Exhibit Ko 1).

In the case of the plaintiff's goods, if a user switches on and talks to the stuffed animal product, the apparatus built in the torso part thereof makes it replay the speech

immediately with its head, etc., moving up and down.

(3) Act of the defendant

Since September 2012, the defendant has purchased 44,352 units of Yamani Goods 2 in total (among which 31,680 units were the plaintiff's goods) and sold them on a wholesale basis to retail shops and service area shops, etc. The defendant stopped purchasing these goods from the plaintiff in April 2013. Since June 1, 2013, the defendant has been selling the defendant's goods.

Like the plaintiff's goods, the defendant's goods also have a built-in apparatus in its torso part, which is designed to have the stuffed animal immediately replay what has been said to it when it is switched on.

2. Issues

(1) Whether the defendant's goods were manufactured by imitating the configuration of the plaintiff's goods (Issue 1)

(2) The amount of damage suffered by the plaintiff (Issue 2)

(omitted)

No. 4 Court decision

1. Issue 1 (Whether the defendant's goods were manufactured by imitating the configuration of the plaintiff's goods)

(1) Introduction

Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act specifies that an act of assigning or otherwise handling goods that were produced by imitating the configuration of another person's goods constitutes an act of unfair competition. The "configuration of goods" means the external and internal shape of goods and the pattern, color, gloss, and texture combined with said shape, which can be perceived through the human senses by consumers when they use the goods in an ordinary way (paragraph (4) of said Article). "Imitate" (paragraph (1), item (iii) of said Article) means an act of creating goods that are substantially identical to another person's goods, based on the configuration of said goods (paragraph (5) of said Article).

The purpose of defining the aforementioned act of imitating the configuration of goods as an act of unfair competition is to protect the developer of the configuration of new goods who has invested money and energy from another person who attempts to free-ride the achievement of said developer by imitating said configuration without investing money and energy. Therefore, in order for said act of unfair competition to be established, the following two requirements must be met: [i] the configuration of the

goods for which protection is sought has a new feature that any other conventional goods of that kind do not have, while that of the imitating goods also has such feature and [ii] a comparison between the goods of the two parties reveals that those goods are extremely similar to such extent that the configuration of those goods can be recognized as identical as a whole or identical in substance. When these two requirements are met, an examination should be conducted to determine whether the relevant goods were created based on the configuration of the original goods.

The following sections examine whether the defendant's goods imitated the configuration of the plaintiff's goods or not.

(2) Development of the plaintiff's goods and the sale of the defendant's goods

According to the exhibits specified below (including the branch numbers) and the entire import of the oral argument (including the facts based on which the aforementioned determinations were made), the following facts can be found. There is no evidence to disprove them.

A. The plaintiff is a stock company established in 1985. Initially, it manufactured and produced household and industrial plastic products, etc., but gradually started ordering Chinese and Taiwanese makers to manufacture miscellaneous daily goods and cute miscellaneous goods such as character goods, and importing them for sale in Japan. The plaintiff decided to develop a teddy bear-type stuffed bear cub and had a maker produce a sample, gave various instructions to the maker, and created the plaintiff's original stuffed animal "シュエッティーベア" (Chouettie Bear). The plaintiff has been manufacturing and selling it since September 2010. "シュエッティーベア" (Chouettie Bear) has become widely known as unconventional goods manufactured by the plaintiff (Exhibits Ko 1 and 8).

B. In around 2010, the Chinese maker that was a supplier of the plaintiff created a device named "おしゃべりギミック" (speaking gimmick) (the "Apparatus"), which was designed to have a toy record and replay human speech while moving its head. The plaintiff had been outsourcing the manufacturing of goods, i.e., stuffed animals such as monkeys with a built-in Apparatus, as another company's OEM products. Since around July 2011, jointly with the Chinese maker, the plaintiff developed Yamani Goods by incorporating the Apparatus in "Chouettie Bear." Since September 2011, the plaintiff gave the Chinese maker instructions concerning the configuration, colors, fabric, and finishing process of said goods. In December 2011, the plaintiff started selling Yamani Goods (Exhibits Ko 1, 5 to 7, and 9).

C. Since December 2011, the plaintiff has sold about 120,000 units of Yamani Goods. In November 2012, the plaintiff gave an exclusive license concerning Yamani Goods to

Kabushiki Kaisha Fuji, to which Yamani Goods had been sold on a wholesale basis, while it changed the appearance of Yamani Goods, developed the second version of Yamani Goods 2, which also had the Apparatus built inside, and sold them from December 2012. The plaintiff subsequently developed goods by changing the colors of the stuffed animal and the accessories attached to it. In January 2013, the plaintiff started selling a new version of the plaintiff's goods, i.e., Ver.5 of Yamani Goods 2 (Exhibit Ko 1).

D. The defendant is a stock company engaged in manufacturing, processing, and selling food products, planning souvenirs for tourists, and selling them to retail shops on a wholesale basis.

From September 2012 to April 2013, the defendant purchased 44,352 units of Yamani Goods 2 from the plaintiff (among which, 31,680 units are the plaintiff's goods) and sold them on a wholesale basis to retail shops and service area shops, etc. (Exhibit Otsu 21).

E. In around November 2012, the defendant was informed by its acquaintance that stuffed bears similar to Yamani Goods 2 were available in China. The defendant obtained a sample in December 2012 and decided to order a Chinese maker to produce stuffed bears that have an apparatus designed to record and replay a human speech. The defendant requested the maker to add ribbons and scrunchies to stuffed animals and explained to the maker the embroidery pattern to be affixed to one foot and the three color variations and other details. Around March 2013, the defendant decided which materials and parts should be used for the new goods. In April 2013, the defendant ordered the manufacturing of the defendant's goods (Exhibit Otsu 21).

F. From around May 10, 2013, the defendant started notifying its business partners that the price of the existing maker's goods "おしゃべりベアー" (Oshaberi bear) (the "plaintiff's goods") would be raised to 2,480 yen for subsequent sales, while the defendant could sell its original goods named "ハッピーベアー" (Happy bear) (the "defendant's goods") at 2,000 yen and advertised that, while the existing maker's goods had a separate battery holder, the defendant could now supply products with a built-in battery. In this way, the defendant asked its business partners to purchase the defendant's goods and requested them to change the JAN code from that of the plaintiff's goods to that of the defendant's goods. Also, the defendant advertised to the effect that the defendant's goods were an advanced version of the very popular plaintiff's goods and that the advanced version was the defendant's original product (Exhibits Ko 17 and 18, Otsu 21).

G. The defendant stopped purchasing the plaintiff's goods from the plaintiff after

purchasing them in April 2013 for the last time. From June 1, 2013, the defendant started selling the defendant's goods. By March 2014, the defendant sold at least 81,025 units of the defendant's goods excluding the goods returned from the purchasers to the defendant.

(3) Configuration of the plaintiff's goods

The configuration of the plaintiff's goods is as shown in Attachment 1, having the following features (Undisputed facts, Exhibits Ko 34 to 36, the entire import of the oral argument).

[Overall configuration]

[A] A furry stuffed animal shaped like a bear in a sitting posture.

[B] A ribbon shaped like a string of flowers colored in red, yellow, and pink is attached to the left ear.

[C] The fur is light pink, about 10 mm in length, and slightly curled.

[D] The mouth, nose, the soles and the inner sides of the ears are milky white. The fur in those areas is straight and about 1 mm or shorter in length.

[E] The product size is about 145 mm in height (the height of the head part is about 70 mm and the height of the torso part is about 75 mm), the width of the head part excluding the ears is about 105 mm, the distance between the centers of the bases of the two ears is about 80 mm, and the depth of the head part (up to the tip of the nose) is about 110 mm.

[F] The shape of the bottom part is approximately circular (about 74 mm in width and about 67 mm in depth). The white plastic part is exposed. The bottom part includes the lid of the battery holder screwed onto the bottom part and an on/off switch.

[Eyes]

[G] The two eyes are made of black round parts horizontally affixed to the front side of the head part with a certain distance in between.

[H] The size of each eye is about 13 mm in diameter.

[I] The distance between the centers of the eyes is about 42 mm.

[Mouth and nose]

[J] The mouth and nose part is made by protruding the lower part of the area between the eyes toward the front by about 30 mm.

[K] The mouth and nose part has a round shape (about 37 mm in height and about 40 mm in width) colored milky white and has straight fur about 1 mm or shorter in length.

[L] The nose is formed into an isosceles triangle colored in black with roundish corners placed with the longest side upward and two other lines forming a corner pointing downward.

[M] The nose part is about 14.5 mm in width and 10 mm in height.

[N] The mouth is created by U-shaped black stitches extending from the lower central part of the nose downward to the right and also downward to the left (W-shape as a whole if the right part and the left part are combined).

[Torso]

[O] The two arms are attached to the right and left sides of the torso in the area around the border between the head part and the torso part in a manner that can allow the movement of the arms.

[P] The two legs are attached to the right and left corners of the bottom of the torso part in a manner that can allow the movement of the legs. The bottom of each leg has an area with straight milky white fur about 1 mm or shorter in length, pointing upward toward the right and left respectively.

In the bottom part of the left leg, stitch work consisting of an ornamental letter "C," which is expressed in a purple outline against the white background, has been created.

(4) Configuration of the defendant's goods

The configuration of the defendant's goods is as follows (Undisputed facts, Exhibits Ko 34 to 36, the entire import of the oral argument).

[Overall configuration]

[a] A furry stuffed animal shaped like a bear in a sitting posture.

[b-1] Defendant Goods (1) have a "scrunchy made of a beige cloth band to which a yellow bow tie is attached" and a "scrunchy made of a beige cloth band to which a red flower is attached" around the neck.

[b-2] Defendant Goods (2) have a "scrunchy made of a beige cloth band to which a light blue bow tie is attached" and a "scrunchy made of a beige cloth band to which a pink flower is attached" around the neck.

[b-3] Defendant Goods (3) have a "scrunchy made of a beige cloth band to which a red bow tie is attached" and a "scrunchy made of a beige cloth band to which a yellow flower is attached" around the neck.

[c-1] Defendant Goods (1) have slightly curled light pink fur about 12 mm in length.

[c-2] Defendant Goods (2) have slightly curled dark beige fur about 12 mm in length.

[c-3] Defendant Goods (3) have slightly curled dark brown fur about 12 mm in length.

[d] The mouth, nose, the soles and the inner sides of the ears are milky white. The fur in those areas is straight and about 1 mm or shorter in length.

[e] The product size is about 145 mm in height (the height of the head part is about 70 mm and the height of the torso part is about 75 mm), the width of the head part excluding the ears is about 100 mm, the distance between the centers of the bases of the

two ears is about 78 mm, the depth of the head part (up to the tip of the nose) is about 95 mm.

[f] The shape of the bottom part is approximately rectangular (about 33 mm in width and about 33 mm in depth). The white plastic part is exposed. The bottom part includes the lid of the battery holder screwed onto the bottom part and an on/off switch.

[Eyes]

[g] The two eyes are made of black round parts horizontally affixed to the front side of the head part with a certain distance in between.

[h] The size of each eye is about 13 mm in diameter.

[i] The distance between the centers of the eyes is about 43 mm.

[Mouth and nose]

[j] The mouth and nose part is made by protruding the lower part of the area between the eyes toward the front by about 30 mm.

[k] The mouth and nose part has a round shape (about 33 mm in height and about 42 mm in width) colored milky white and has straight fur about 1 mm or shorter in length.

[l] The nose is formed into an isosceles triangle colored in black with roundish corners placed with the longest side upward and two other lines forming a corner pointing downward.

[m] The nose part is about 13 mm in width and 10 mm in height.

[n] The mouth is created by U-shaped black stitches extending from the lower central part of the nose downward to the right and also downward to the left (W-shape as a whole if the right part and the left part are combined).

[Torso]

[o] The two arms are attached to the right and left sides of the torso in the area around the border between the head part and the torso part in a manner that can allow the movement of the arms.

[p] The two legs are attached to the right and left corners of the bottom of the torso part in a manner that can allow the movement of the legs. The bottom of each leg has an area with straight milky white fur about 1 mm or shorter in length, pointing upward toward the right and left respectively.

In the bottom part of the left leg, red stitch work with the letters "HAPPY" and a heart-shaped mark have been created.

(5) Common features between the plaintiff's goods and the defendant's goods

The plaintiff's goods and the defendant's goods have the following commonalities.

A. A stuffed animal shaped like a bear in a sitting posture. It is covered with fur except for the mouth and nose part. ([A], [a])

- B. The fur is about 10 to 12 mm in length, and slightly curled. ([C], [c-1] to [c-3])
- C. The fur color of the plaintiff's goods and Defendant's Goods (1) is light pink. ([C], [c-1])
- D. The mouth and nose part, the soles of the feet, and the internal sides of the ears have straight fur about 1 mm or shorter in length. ([D], [d])
- E. The product size is about 145 mm in height (the height of the head part is about 70 mm and the height of the torso part is about 75 mm), the width of the head part excluding the ears is about 100 to 105 mm, the distance between the centers of the bases of the two ears is about 80 mm, the depth of the head part (up to the tip of the nose) is about 95 to 110 mm. ([E], [e])
- F. In the bottom part, the white plastic part is exposed. The bottom part includes the lid of the battery holder screwed onto the bottom part and an on/off switch. ([F], [f])
- G. The two eyes are made of black round parts horizontally affixed to the front side of the head part with a certain distance in between. ([G], [g])
- H. The size of each eye is about 13 mm in diameter. ([H], [h])
- I. The distance between the centers of the eyes is about 42 to 43 mm. ([I], [i])
- J. The mouth and nose part is made by protruding the lower part of the area between the eyes toward the front by about 30 mm. ([J], [j])
- K. The mouth and nose part have milky white straight fur about 1 mm or shorter in length. ([K], [k])
- L. The nose is formed into an isosceles triangle colored in black with roundish corners placed with the longest side upward and two other lines forming a corner pointing downward. ([L], [l])
- M. The nose part is about 13 to 14.5 mm in width and 10 mm in height. ([M], [m])
- N. The mouth is created by U-shaped black stitches extending from the lower central part of the nose downward to the right and also downward to the left (W-shape as a whole if the right part and the left part are combined). ([N], [n])
- O. The two arms are attached to the right and left sides of the torso in the area around the border between the head part and the torso part in a manner that can allow the movement of the arms. ([O], [o])
- P. The two legs are attached to the right and left corners of the bottom of the torso part in a manner that can allow the movement of the legs. The bottom of each leg has an area with straight milky white fur about 1 mm or shorter in length, pointing upward toward the right and left respectively. ([P], [p])
- Q. The plaintiff's goods and the defendant's goods are identical in terms of the number, corresponding body parts, and shapes of the sewing pattern pieces except for some

pieces (Exhibits Ko 31 to 33)

(6) Differences between the plaintiff's goods and the defendant's goods

The plaintiff's goods and the defendant's goods are different in terms of configuration regarding the following points.

A. Accessories ([B], [b-1] to [b-3])

In the case of the plaintiff's goods, a ribbon shaped like a string of flowers colored in red, yellow, and pink is attached to the left ear. In the case of the defendant's goods, two detachable scrunchies are attached to the neck.

B. Color, length, etc. of fur ([C], [c-1] to [c-3])

The plaintiff's goods have light pink fur. Defendant's Goods (2) have dark beige fur. Defendant's Goods (3) have dark brown fur. The length of the fur of the plaintiff's goods is 10 mm, while that of the defendant's goods is 12 mm.

C. Shape of the bottom part ([F], [f])

In the case of the plaintiff's goods, the shape of the bottom part is approximately circular (about 74 mm in width and about 67 mm in depth). In the case of the defendant's goods, the shape of the bottom part is approximately rectangular (about 33 mm in width and depth).

D. Shape of the contrasting fabric part ([K], [k])

The size of the area around the nose and mouth, the so-called contrasting fabric part, is 40 mm in width and 37 mm in depth in the case of the plaintiff's goods, and 42 mm in width and 33 mm in depth in the case of the defendant's goods.

E. Shape of the stitch work affixed to the sole of the left foot ([P], [p])

In the case of the plaintiff's goods, in the bottom part of the left leg, stitch work with an ornamental letter "C," which is expressed in a purple outline against the white background has been created. In the case of the defendant's goods, in the bottom part of the left leg, red stitch work with the letters "HAPPY" and a heart-shaped mark have been created.

F. Sewing pattern pieces

The plaintiff's goods and the defendant's goods are slightly different in terms of the shapes of the sewing pattern pieces for the torso, the back side of the head part, and both hands.

(7) Substantive identicalness

A. The defendant alleged that the characteristics of the plaintiff's goods are almost identical with those of other similar goods sold in the market and pointed out that any person who tries to produce and sell stuffed bears that have the "configuration necessary to secure the functions of said goods" inevitably end up producing goods that have a

similar appearance as the plaintiff's goods. However, there is no evidence to prove that "similar goods" mentioned by the defendant have existed since before the release of the plaintiff's goods. It is clear that stuffed bears do not necessarily have to have the configuration of the plaintiff's goods as found above. The specific configuration of the plaintiff's goods cannot be considered to be commonplace. In light of the background of the development of the plaintiff's goods as found in (2) above, the configuration of the plaintiff's goods should be protected under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.

B. The plaintiff's goods and the defendant's goods have many common features in terms of the configuration as a whole as described in (5) above. In consideration of the fact that the plaintiff's goods and the defendant's goods are almost identical in terms of the overall size as well, those goods can be considered to be almost identical in terms of the configuration of the main body. The plaintiff's goods and the defendant's goods have many commonalities as follows. Regarding the shape and length of fur, which determines the overall impression of the stuffed animal, both products have slightly curled fur of about 10 to 12 mm in length. Regarding the shapes of the eyes, mouth, and nose, which affect the impression of the face, both products are identical in many features such as the mouth and nose part with milky white short fur that protrudes toward the front by about 30 mm, the distance of 41 to 43 mm between the two eyes, the shapes of the parts used as the eyes and the nose, and the mouth created by U-shaped black stitches extending from the lower central part of the nose downward to the right and also downward to the left (W-shape as a whole if the right part and the left part are combined). While the two products are slightly different in terms of the size of the milky white area and the length of fur, it is extremely difficult to recognize the difference between the two in terms of the length of the stitches extending from the nose (Exhibits 34 to 36). These differences can be considered to be insignificant and would not change the impression of the faces of the stuffed animals. Therefore, it can be said that the plaintiff's goods and the defendant goods are extremely similar in terms of the overall structure and facial features.

In addition to the above-mentioned points, there are the following differences between the plaintiff's goods and the defendant's goods: the accessories, fur color (the plaintiff's goods: light pink, Defendant's Goods (2): dark beige, Defendant's Goods (3): dark brown), and the shape of the stitch work affixed to the sole of the left foot. In view of the facts that the scrunchies, etc. affixed to the defendant's goods are detachable and are mere accessories to the stuffed animal, that it is common that such accessories vary from one product to another to some extent and that, similarly, it is widely accepted that

fur color and the stitch work on the sole of the foot for the same goods could vary, consumers, i.e., potential purchasers of the goods, would not perceive such variations of goods as different goods. Regarding the difference in the shape of the bottom part, since no one can recognize the difference unless he/she turns the product upside down, any consumers who use the goods in a commonly expected manner could not recognize the difference in the bottom part. Therefore, the shape of the bottom part cannot be regarded to be the configuration of the goods. While the defendant alleged that the two products are slightly different in terms of the length of arms, the length of the base of each ear, and the width of the tail (Exhibits Ko 34 (13)(14)(21), Ko 35 (13)(14)(21), Ko 36 (13)(14)(21)), these differences cannot be considered to be significant due to the facts that the arms are not fixed, but sewn just to hang down from the body and that the difference in the length of the arms is unnoticeable and that the length of the base of each ear and the width of the tail are difficult to see because the stuffed animal is covered with fur that is long enough to hide them.

Therefore, the plaintiff's goods and the defendant's goods can be considered to be extremely similar in terms of configuration including the overall structure and facial features. Even if the differences between the two products are taken into consideration, the two products can be regarded to be identical in substance.

(8) Act of imitation

As found in (7) above, the plaintiff's goods and the defendant's goods should be considered to be identical in substance. As found in (2) above, since the defendant continuously purchased Yamani Goods 2, including the plaintiff's goods, for a certain period of time and subsequently developed the defendant's goods, and recommended its business partners to purchase the defendant's goods by notifying that the defendant's goods were inexpensive substitutes of the plaintiff's goods or that the defendant's goods were an advanced version of the plaintiff's goods, it can be presumed that the defendant produced the defendant's goods based on the plaintiff's goods.

The appearance of the stuffed animal is made by combining many sewing pattern pieces. The construction, number, and shapes of sewing pattern pieces of stuffed bears generally differ from one maker to another (Exhibits Ko 24 to 26). A comparison between the plaintiff's goods and the defendant's goods has revealed that the two products are almost identical in terms of the number and shapes of the sewing pattern pieces excluding slight differences in terms of the shapes of sewing pattern pieces for the torso, the back side of the head part, and both hands (Exhibits Ko 21 to 23, 31 to 33).

On these grounds, it is reasonable to find that the defendant's goods were produced

based on the plaintiff's goods.

(9) Conclusion

On these grounds, the defendant's goods can be considered to have been produced by imitating the configuration of the plaintiff's goods. Thus, the defendant can be considered to have committed an act of unfair competition specified in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.

(omitted)

3. Conclusion

(1) As found above, it can be found that defendant intentionally produced and sold the defendant's goods by imitating the configuration of the plaintiff's goods as substitutes for the plaintiff's goods and consequently committed an act of unfair competition that deprived the plaintiff of the opportunities to sell the plaintiff's goods and thereby damaged the plaintiff's business interests. Therefore, it is reasonable to accept the plaintiff's claim for an injunction against the defendant's act of selling or otherwise handling the defendant's goods, the plaintiff's claim for destruction thereof under Article 3, paragraphs (1) and (2) of the Unfair Competition Prevention Act, and also the plaintiff's claim for payment of damages from the defendant as mentioned in 2.(3) above under the main text of Article 4 of the Unfair Competition Prevention Act.

(2) Thus, the court finds the plaintiff's claims to be well-grounded and acceptable to the extent that [i] the plaintiff's claim for an injunction against the defendant's act of selling and advertising the defendant's goods and destruction of the defendant's goods and [ii] the plaintiff's claim for payment of 26,538,170 yen as damages and delay damages accrued thereon at a rate of 5% per annum from August 9, 2013, until the date of full payment. The court dismisses any other claims of the plaintiff because they are groundless. The judgment shall be rendered in the form of the main text by applying the main text of Article 64 and Article 61 of the Code of Civil Procedure to the calculation of court costs and Article 259, paragraph (1) of said Act to the declaration of provisional execution.

Osaka District Court, 21st Civil Division

Presiding judge: TANI Yuko

Judge: TAHARA Minako

Judge: MATSUAMI Takashi



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社 山二
債務者 ハッピーカンパニー

参甲 第 1 号 証
(債権者 山二 商品)



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社 山二
債務者 ハッピーカンパニー
参 甲 第 1 号 証
(債権者 山二 商品)



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社 山二
債務者 ハッピーカンパニー
参 甲 第 1 号 証
(債権者 岡山二 商品)



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社 山
ハッピーカンパニー
参 甲 第 1 号 証
(債権者 山二 商品)



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社(山)ニ
債務者 ハッピーカンパニー
参 甲 第 1 号 証
(債権者(株)山ニ商品)



大阪地方裁判所 第21民事部
平成25年(ヨ)第20013号・仮処分命令事件
債権者 株式会社 山二
債務者 ハッピーカンパニー
参 甲 第 1 号 証
(債権者 山二 商品)

Attachment 2

Product name: ハッピー★ベアー (Happy★Bear)

JAN Code: 4582302052773

Colors: Pink (the configuration is shown in (1)-1 to (1)-6)

Beige (the configuration is shown in (2)-1 to (2)-6)

Brown (the configuration is shown in (3)-1 to (3)-6)

2014 02 10

正



大塚製粉株式会社 第21民事訴訟
平成25年(ワ)第7604号事件
平成25年1月1日第20013号事件
原告・債権者 株式会社 山
被告・債務者 株式会社 ハッピーカンパニー
被告・債務者 株式会社 ハッピーカンパニー商品

大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ヨ)第20013号事件
原告・債権者 株式会社 山二
被告・債権者 株式会社 ハッピーカンパニー
被告・債務者 備ハッピーカンパニー商品

大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ヨ)第20013号事件
原告・債権者 株式会社 山二
被告・債務者 株式会社 ハッピーカンパニー
被告・債務者 ㈱ハッピーカンパニー商品

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大田地方裁判所 第21民事部
平成25年(ワ)第7004号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山一
被告・債務者 株式会社 ハッピーカンパニー
報告・債務者 御ハッピーカンパニー商品

①-4

2014 02 10

大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山二
被告・債務者 株式会社 ハッピーカンパニー
被告・債権者 株式会社 ハッピーカンパニー商品



2014 02 10

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大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山
被告・債務者 ハッピーカンパニー
被告・債務者 ハッピーカンパニー商品



2014 02 10

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2014 02 28



大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山
被告・債務者 株式会社 ハッピーカンパニー
報告・債務者 株式会社 ハッピーカンパニー 商品

大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ヨ)第20013号事件
原告・債権者 株式会社 山二
被告・債権者 株式会社 ハッピーカンパニー
被告・債務者 ㈱ハッピーカンパニー商品



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大阪地方裁判所 第21民事部
 平成25年(ワ)第7604号事件
 平成25年(ワ)第20013号事件
 原告・債権者 株式会社 山二
 被告・債務者 株式会社 ハッピーカンパニー
 報告・債権者 株式会社 ハッピーカンパニー商品



2014 02 28

大阪地方裁判所 第21民事部
平成25年(ワ)第71014号事件
平成25年(ワ)第21011号事件
原告・債権者 株式会社 山二
被告・債務者 株式会社 ハッピーカンパニー
被控・債務者 株式会社 ハッピーカンパニー商品



2014 02 28



大阪地方裁判所 第21民事部
平成25年(ワ)第7014号事件
平成25年(ホ)第20913号事件
原告・債権者 株式会社 山一
被告・債権者 株式会社 ハッピーカンパニー
被告・債権者 株式会社 ハッピーカンパニー商品

大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山一
被告・債権者 株式会社 ハッピーカンパニー
被告・債務者 ㈱ハッピーカンパニー商品



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大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ワ)第20013号事件
原告・債権者 株式会社 山
被告・債権者 株式会社 ハッピーカンパニー
被告・債務者 ㈱ハッピーカンパニー商品



大阪地方裁判所 第21民事部
平成25年(ワ)第7604号事件
平成25年(ロ)第20013号事件
原告・債権者 株式会社 山
被告・債務者 株式会社 ハッピーカンパニー
報告・債務者 ㈱ハッピーカンパニー商品



大阪地方裁判所 第21民事部
平成25年11月第7回第1回民事部
平成25年第1回第2回第1回民事部
原告・被告者 株式会社
被告・原告者 株式会社
被告・原告者 株式会社
被告・原告者 株式会社



大阪地方裁判所 第21民事部
 平成25年(ワ)第7604号事件
 平成25年(ワ)第20013号事件
 原告・債権者 株式会社 ハッピーカンパニー
 被告・債務者 株式会社 ハッピーカンパニー商品
 被告・債務者 関ハツピーカンパニー商品



2014 02 10

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