

Date	March 5, 2004	Court	Tokyo District Court, 47th Civil Division
Case number	2003 (Wa) 19002		
– A case in which the court found that the business indication "セイジョー" (seijō) is not similar to the business indication "成城調剤薬局" (seijō chōzai yakkyoku).			

Reference: Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act  
Number of related rights, etc.:

### Summary of the Judgment

1. In this case, the plaintiff, which conducts drug store chain business by using the business indication "セイジョー" (seijō) (hereinafter referred to as the "plaintiff's indication"), alleged against the defendant, which operates a drug store by using the business indication "成城調剤薬局" (seijō chōzai yakkyoku) (hereinafter referred to as the "defendant's indication"), that, since the plaintiff's indication is well known, the defendant's use of the defendant's indication, which is similar to the plaintiff's indication, has caused confusion between the plaintiff's business and the defendant's business. Based on this allegation, the plaintiff sought an injunction against the defendant's use of the defendant's indication and requested deletion of the defendant's indication under Article 2, paragraph (1), item (i) and Article 3 of the Unfair Competition Prevention Act, and demanded payment of 10 million yen as damages, which is equivalent to the amount of royalties, under Article 709 of the Civil Code.

2. In this judgment, the court mainly held as follows and determined that the plaintiff's indication and the defendant's indication cannot be considered to be similar to each other because traders and consumers are not likely to perceive the two indications to be similar as a whole.

(1) The "成城" part of the defendant's indication is the name of the place of the defendant's drug store. It is obvious from experience that, in general, an indication of business often contains the name of the place of the store, business office, etc. Thus, the part representing the name of the place in such indication of business is not distinctive in particular. The term "調剤" means making or preparing medicine. The term "薬局" means a place or store where pharmacists make medicine. Therefore, the term "調剤薬局" can be considered to be a generic term that refers to a pharmacist's business of drug preparation. Consequently, it should be considered that neither the "成城" part nor the "調剤薬局" part of the defendant's indication can be associated with any pronunciation or concept that functions as an identifier of a business entity, and hence the indication "成城調剤薬局" as a whole is associated with a pronunciation and concept that functions as an identifier of a business entity.

(2) The appearances of the plaintiff's and the defendant's indications of business are different from each other. The plaintiff's indication consists of katakana characters and is spelled not as "セイジョウ" but as "セイジョー," which ends with a long sound. On the other hand, the defendant's indication consists of the Chinese characters "成城," to which the characters "調剤薬局" are added. The pronunciation of the plaintiff's indication is "seijō," while that of the defendant's indication is "seijou chouzai yakkyoku." The two indications partially share the same pronunciation, but differ in terms of the number of syllables. In conclusion, the two indications are different as a whole in terms of pronunciation.

(3) The concept associated with each of the indications is as follows. The plaintiff's indications can be associated with "正常" (seijō: normal), "性状" (seijō: condition), "清浄" (seijō: clean), etc. and also associated with the name of the place "成城" (seijō). The defendant's indication can be associated with the concept of "a drug store located in Seijō."

(4) The plaintiff uses the indication of its business "セイジョー" (seijō) in the leaflets attached to newspapers and direct mails, and other advertising media so that consumers can visually perceive said indication in order to sell medicine, cosmetics, daily commodities, etc. The plaintiff also provides the service of preparing medicine based on prescriptions. The defendant also operates, at the defendant's drug store, the business of preparing medicine based on prescriptions written by a hospital. Most of the medicine is prepared based on the prescriptions written by Sasamoto Children's Clinic. In consideration of these business practices, it cannot be said that any trader or consumer who observes the two indications of business that are different from each other as mentioned above would perceive them to be similar as a whole based on the appearance, pronunciation, impression based on the concept, memory, association, etc. of each of the indications.

Judgment rendered on March 5, 2004

2003 (Wa) 19002 Case of Seeking Injunction against Use of Trade Name, etc.

Date of conclusion of oral argument: February 6, 2004

### Judgment

Plaintiff: Seijo Corporation

Defendant: Yugen Kaisha Ishizaki Medical

### Main text

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

### Facts and reasons

#### No. 1 Claims

1. The defendant shall not use the indication "成城調剤薬局" (seijō chōzai yakkyoku) for its business.
2. The defendant shall delete the indication "成城調剤薬局" from the sign placed at the store located in (omitted), Setagaya-ku, Tokyo.
3. The defendant shall pay the plaintiff 10 million yen and delay damages accrued thereon at a rate of 5% per annum from August 31, 2003, until the date of full payment.

#### No. 2 Outline of the case

##### 1. Undisputable facts, etc.

##### (1) Parties concerned

The plaintiff is a stock company established for the purpose of, inter alia, operating drug stores and pharmacies, manufacturing and selling medicine, etc., and managing supermarkets (the entire import of the oral argument).

The defendant is a limited liability company (yūgen kaisha) established for the purpose of operating drug stores, etc. (undisputed).

##### (2) Plaintiff's business activities

In 1951, the plaintiff opened a drug store named "成城薬局" (seijō yakkyoku) in the specified address ((omitted), Setagaya-ku, Tokyo at that time) and changed its trade name to the current tradename in 1969 and now operates 180 chain drug stores in the Kanto and Tokai regions (as of January 31, 2004) by using an indication "セイジョー" (Seijō) for its business (Exhibits Ko 11 and 13).

The plaintiff operates three drug stores in Seijō, Setagaya-ku, Tokyo, in which the defendant opened a store under the name "成城調剤薬局" (seijō chōzai yakkyoku), and

also one drug store in a nearby district, Chofu-shi, Tokyo. (Exhibits Ko 6 and Otsu 1).

Name: Address

A. "セイジョー薬局" (seijō yakkyoku): (omitted) Setagaya-ku, Tokyo

B. "くすりセイジョー成城二番店" (kusuri Seijō Seijō nibanten): (omitted) the same as above

C. "ビューティーストアセイジョー" (beauty store seijō): (omitted) the same as above

D. "セイジョー調剤薬局 1 号店" (seijō chōzai yakkyoku ichi gou ten): (omitted) Chofu-shi, Tokyo

### (3) Defendant's act

Around April 2003, the defendant opened a drug store (the "defendant's drug store") in (address partially omitted), Setagaya-ku, Tokyo by using "成城調剤薬局" (seijō chōzai yakkyoku) as an indication of its business (the "defendant's indication") (undisputed).

The defendant's drug store is about 70 m, 200 m, and 110 m away from the stores specified in A to C of (2) above. (Exhibit Otsu 1)

## 2. Outline of the case

In this case, the plaintiff, which conducts drug store chain business by using the plaintiff's indication "セイジョー" (seijō), alleged against the defendant, which operates a drug store by using the defendant's indication "成城調剤薬局" (seijō chōzai yakkyoku), that, since the plaintiff's indication is well known, the defendant's use of the defendant's indication, which is similar to the plaintiff's indication, has caused confusion between the plaintiff's business and the defendant's business. The plaintiff sought an injunction against the defendant's use of the defendant's indication and requested deletion of the defendant's indication under Article 2, paragraph (1), item (i) and Article 3 of the Unfair Competition Prevention Act, and demanded payment of 10 million yen as damages, which is equivalent to the amount of royalties, under Article 709 of the Civil Code.

## 3. Issues in this case

(1) Whether the plaintiff's indication is well known or not

(2) Whether the defendant's indication is similar to the plaintiff's indication

(3) Whether the defendant's indication would cause confusion between the defendant's business and the plaintiff's business

(4) Applicability of Article 12, paragraph (1), item (i) of the Unfair Competition Prevention Act

(5) Whether any damage has been caused, and, if so, how much

(omitted)

No. 4 Court decision

1. Issue (2) (Whether the defendant's indication is similar to the plaintiff's indication)

(1) A determination as to whether an indication of a person's business can be considered to be similar to an indication of another person's business under Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act should be made in consideration of whether traders and consumers could perceive the two indications to be similar as a whole based on the appearance, pronunciation, impression based on the concept, memory, association, etc. of each indication (see judgment of the Second Petty Bench of the Supreme Court of October 7, 1983, 1982 (O) 658, Minshu vo. 37, no. 8, p. 1082)

(2) The plaintiff's indication consists of the characters "セイジョー," while the defendant's indication consists of the characters "成城" and "調剤薬局." The "成城" part of the defendant's indication is the name of the place of the defendant's drug store. It is obvious from experience that, in general, an indication of business often contains the name of the place of the store, business office, etc. Thus, the part representing the name of the place in such indication of business is not distinctive in particular. The term "調剤" means making or preparing medicine (see "Kojien (5th edition)", p. 1741, Article 69, paragraph (3) of the Patent Act). The term "薬局" means a place or store where pharmacists make medicine (see "Kojien (5th edition)", p. 2684, Article 2, paragraph (7) of the Pharmaceutical Affairs Act, Chapter 3 of said Act). Therefore, the term "調剤薬局" can be considered to be a generic term that refers to a pharmacist's business of drug preparation. Consequently, it should be considered that neither the "成城" nor the "調剤薬局" part of the defendant's indication can be associated with any pronunciation or concept that functions as an identifier of a business entity, and hence the indication "成城調剤薬局" as a whole is associated with a pronunciation and concept that functions as an identifier of a business entity.

(3) The appearances of the plaintiff's and the defendant's indications of business are different from each other. The plaintiff's indication consists of katakana characters and is spelled not as "セイジョウ" but as "セイジョー," which ends with a long sound. On the other hand, the defendant's indication consists of the Chinese characters "成城," to which the characters "調剤薬局" are added.

The pronunciation of the plaintiff's indication is "seijō," while that of the defendant's indication is "seijou chouzai yakkyoku." The two indications partially share the same pronunciation, but differ in terms of the number of syllables. In conclusion, the two

indications are different as a whole in terms of pronunciation.

The concept associated with each of the indications is as follows. The plaintiff's indications can be associated with "正常" (seijō: normal), 性状 (seijō: condition), 清浄 (seijō: clean), etc. and also associated with the name of the place "成城" (seijō) ("Kojien (5th edition)", p. 1469). The defendant's indication can be associated with the concept of "a drug store located in Seijō."

The plaintiff uses the indication of its business "セイジョー" (seijō) in the leaflets attached to newspapers and direct mails, and other advertising media so that consumers can visually perceive said indication in order to sell medicine, cosmetics, daily commodities, etc. (Exhibits Ko 7 to 10). The plaintiff also provides the service of preparing medicine based on prescriptions (Exhibits Ko 6, 8, and 12). The defendant also operates, at the defendant's drug store, the business of preparing medicine based on prescriptions written by a hospital. Most of the medicine is prepared based on the prescriptions written by Sasamoto Children's Clinic (Exhibits Otsu 6 and 7). In consideration of these business practices, it cannot be said that any trader or consumer who observes the two indications of business that are different from each other as mentioned above would perceive them to be similar as a whole based on the appearance, pronunciation, impression based on the concept, memory, association, etc. of each of the indications.

(4) As described above, traders and consumers are not likely to perceive the plaintiff's indication and the defendant's indication to be similar as a whole. Thus, the two indications cannot be considered to be similar to each other.

2. Issue (4) (Applicability of Article 12, paragraph (1), item (i) of the Unfair Competition Prevention Act)

(1) As mentioned in 1 (2) above, the "成城" part of the defendant's indication means the name of the place of the defendant's drug store. The "調剤薬局" part is a generic term that refers to the defendant's business of drug preparation.

(2) Based on experience, if a store, etc. is opened in a certain place to conduct certain business, not limited to a prescription drug store, it is generally quite common to adopt an indication of business consisting of the generic term of its business and the name of the place of the store, etc. In fact, in Seijō, Setagaya-ku, Tokyo, there are many stores, etc. that adopt an indication of business consisting of the name of the place "成城" (Seijō) and the generic term of the business of each of those stores, etc. such as "成城ファーマシー" (seijō fāmarshī: Seijō pharmacy), "成城外科" (seijō geka: Seijō surgery), "成城歯科室" (seijō shikashitsu: Seijō dental office), and "成城コーポ" (seijō kōpo: Seijō cooperative housing) (Exhibit Otsu 1).

Therefore, to begin with, any indication of business consisting of a generic term of the business and the name of a place of the store, etc. should not be used exclusively by any person. Unless there are special circumstances, a person should be allowed to freely use such indication. This stance is the same as Article 12, paragraph (1), item (i) of the Unfair Competition Prevention Act, which provides that any act of using a generic term for goods or business in the way that this is normally done shall be excluded from the application of Article 2, paragraph (1), item (i) of said Act concerning unfair competition. However, in the case where such an indication of business has been used for many years by a certain person, and as a result, it is widely recognized by consumers that said indication pertains to the business of said person, it would not be unreasonable to permit said person to exclusively use said indication of business. In such case, special circumstances should be considered to exist to deny the applicability of Article 12, paragraph (1), item (i) of said Act.

Therefore, unless there are special circumstances as mentioned above, in light of Article 12, paragraph (1), item (i) of the Unfair Competition Prevention Act, it should be interpreted that any act of using an indication of business consisting of the generic name of the business and the name of the place of the store, etc. in the way that this is normally done does not constitute an act of unfair competition specified in Article 2, paragraph (1), item (i) of said Act.

(3) In this case, the defendant opened a prescription drug store in Seijō, Setagaya-ku, Tokyo and has used an indication of business consisting of "成城" (Seijō), which is the name of the place of the defendant's drug store, and "調剤薬局," which is the generic name of the defendant's business. No special circumstances as mentioned above can be recognized.

According to the evidence (Exhibits Ko 1, 6, and Otsu 6) and the entire import of the oral argument, the name of the defendant's drug store is the same as the defendant's indication. Furthermore, the defendant's indication is used as a sign placed in front of the store and displayed at the entrance of the store, etc. in an ordinary manner; in other words, it is used in the way that this is normally done as common business practices.

(4) Thus, in light of the spirit of Article 12, paragraph (1), item (i) of the Unfair Competition Prevention Act, the defendant's act cannot be considered to be an act of unfair competition specified in Article 2, paragraph (1) of said Act.

### 3. Conclusion

As described above, without needing to examine any other factors, it is reasonable to conclude that all of the plaintiff's claims can be considered to be groundless and shall therefore be dismissed. The judgment shall be rendered in the form of the main text.

Tokyo District Court, 47th Civil Division

Presiding judge: TAKABE Makiko

Judge: UEDA Hiroyuki

Judge: MIYAZAKI Takuya