

Date	March 25, 2010	Court	Intellectual Property High Court, Third Division
Case number	2009 (Ne) 10047		
A case in which, with respect to a Buddhist statue produced at the request of a temple, given the facts that the temple, after the death of the author (the producer of the statue), requested a pupil of the author, who had participated in the production of the statue, to make a new head part of the statue, and replaced the head part with a new one, the court found that such replacement constitutes an act prejudicial to the author's honor or reputation, and ordered the defendants to place an advertisement to announce the factual backgrounds.			

References:

Articles 20, 25, 28, 45, 60, and 112, Article 113, paragraph (6), and Articles 115 and 116 of the Copyright Act

1. Given the factual backgrounds of the case, the judgment in prior instance upheld the plaintiff's claim for restoration of the head part of the Kannon statue to its original state based on the request for correction under Article 115 of the Copyright Act (the Act). In the present instance, the court modified the judgment in prior instance, and ordered the defendants to place an advertisement to announce said factual backgrounds. The court's holdings are as follows.

2. "Inside the body part of the Kannon statue, characters which mean "Supervised by Great Buddhist Sculptor T" and "Producers R, J, X / Pupil Y" are written in *sumi* (black ink), and inside the foot tenon of said statue, characters which mean "Supervised by T" and "Producers R, J, X, Y" are written in *sumi*. There is no dispute on this fact between the parties.

However, in this case, the plaintiff's oral and written statements, in which he mentioned that he had participated in the production of the Kannon statue, are the only evidence to prove the fact that the plaintiff had participated in the production of said statue during the period until September 1989, when the woodcarving of the statute was nearly finished. There is no other objective evidence, such as documentary evidence, statements, or testimony. By comprehensively evaluating all evidence available as indicated below, the court can find that the plaintiff had not participated in the production of the Kannon statue during the period until September 1989, when the woodcarving of the statute was nearly finished."

3. "The Kannon statue is a wood-carved statue of a standing image of an eleven-headed Kannon Bosatsu, consisting of a head part to which eleven transformed images of Buddha are affixed, a body part, two arms, a nimbus, and a pedestal. The

head part with the eleven transformed images of Buddha can be regarded as a creative component of the Kannon statute by which R's thoughts or feelings are expressed in a creative approach.

Assuming so, the replacement of the head part of the Kannon statute with a new one, conducted by the defendants, even if they did this for the purpose of amending the look of the eyes on the head part of the statute, constitutes a modification made to the creative component of the statute."

"There is no evidence implying that R had the intent to make a new head part for the Kannon statute during the period since May 18, 1993, when the ceremony to consecrate the newly-made Buddhist image was held, until September 28, 1999, when R died. In light of this, the court cannot go so far as to find that R had a definite intent to make a new head part of the Kannon statute after finishing the production of the statue, by referring to the statements of Defendant Y and the representative of Defendant Kogenji Temple. There is no other evidence to find such fact.

Accordingly, whatever R might have thought of the Kannon statute, it is appropriate to presume that the replacement of the head part of the statute with a new one constitutes a "modification made against the intent" of R as set forth in Article 20, paragraph (1) of the Act, and said replacement cannot be regarded as an act that is "found not to be against the will of the author" as set forth in Article 60 of the Act. None of the defendants' allegations on this point can be accepted."

4. "In light of the circumstances of the case, it is found that the defendants had some reasons to produce a new head part for the Kannon statue and replace its old head part with the new one.

It may have been rational for Defendant Kogenji Temple to consider that the Kannon statue should have half-opened eyes gazing downward with an expression of tender mercy so as to serve as a proper object of worship. However, in order to achieve this, there are other possible options in addition to replacing the head part of the Kannon statue with a new one, such as making a new Kannon statue in whole. All the evidence produced to the court is insufficient to specifically prove that, as compared with such other alternative options, the replacement of the head part of the Kannon statute with a new one, which the defendants actually chose, was the only and imperative option. Consequently, the replacement of the head part of the Kannon statue, which the defendants chose for the purpose of amending the look in the eyes of the statue so that it would have an expression of tender mercy, cannot be regarded as a "modification considered unavoidable" as set forth in Article 20, paragraph (2), item (iv) of the Act."

5. "At the ceremony to consecrate the newly-made Buddhist image held on May 18,

1993, R was introduced as the producer of the Kannon statue, and gave an address in the presence of the guests. In the article of the newspaper issued on June 15, 1995, R was introduced as the producer of the Kannon statue under a heading which read "Buddhist Sculptor R," and a photograph of the statue was shown with a caption "Tokyo Komagome Kogenji Temple Great Kannon (R)." These facts lead to the presumption that as of the date of conclusion of oral argument of this case, more than ten years after the date of R's death (September 28, 1999), R is still known as the Buddhist sculptor who produced the 'Komagome Great Kannon' among the supporters of Kogenji Temple, Buddhist believers, and Buddhist sculptors and other people engaged in the production of Buddhist sculptures. Taking into account this presumed fact and all of the other facts, one can find that the replacement of the head part of the Kannon statue with a new one, conducted by the defendants, is likely to affect the objective evaluation that R receives in society.

Consequently, the replacement of the head part of the Kannon statue with a new one, conducted by the defendants, is regarded as an 'act of exploitation of a work in a manner prejudicial to the honor or reputation of the author, R (assuming that R is still alive)' as set forth in Article 113, paragraph (6) of the Act."

6. "As appropriate measures set forth in Article 115 of the Act, the plaintiff demands against Defendant Kogenji Temple that the defendant restore the head part of the Kannon statue to the original one affixed to the statue at the time of its production, and cease the offering of the statue for public inspection, while also demanding against the defendants that they publish an apology in a newspaper.

However, comprehensively taking into consideration all of the following circumstances concerned, the court considers that: (i) as for the measure to publish an apology (including a correction) demanded by the plaintiff, making an announcement to publicize the objective factual backgrounds of the case would be a sufficient measure to restore R's honor and reputation; and (ii) none of the measures demanded by the plaintiff, namely, restoration of the head part of the Kannon statue to the original one affixed to the statue at the time of its production, publication of an apology in a newspaper, and an injunction against the offering of the statue for public inspection, can be regarded as an appropriate measure to restore R's honor and reputation."

"The replacement of the head part of the Kannon statue with a new one, conducted by the defendants, can be found and evaluated to be an act that could infringe the author's moral rights if the author were still alive. However, the Kannon statue, by its nature, is a work that Defendant Kogenji Temple requested R to produce for the purpose of using

it as an object of worship, and said replacement of the head part can be regarded as part of the repairing work in line with such intended purpose. Defendant Y, who took charge of the replacement work, had participated in the production process of the Kannon statue from beginning to end under the direction of R. Thus, in view of the purpose of the production of the Kannon statue, the motive to replace its head part with a new one, the career of the producer of the new head part used for replacement, and the role of a Buddhist statue as the object of worship, it is inappropriate to order restoration in this case.

Given the circumstances mentioned above, in order to maintain R's honor and reputation, it is sufficient to indicate and announce the factual backgrounds of the case in an advertisement, and therefore an appropriate measure in this case is to publish an advertisement, which contains the statement shown in I of the list of advertisements attached to this judgment, in a manner as shown in II of said list. It is not appropriate for the plaintiff to seek an injunction against the offering of the Kannon statue for public inspection, pursuant to Article 115 of the Act."

Judgment rendered on March 25, 2010

2009 (Ne) 10047 Appeal Case of Seeking an Injunction against Copyright Infringement,
etc.

(Court of prior instance: Tokyo District Court, 2007 (Wa) 23883)

Date of conclusion of oral argument: December 21, 2009

Judgment

Appellant/appellee (Plaintiff of the first instance): X

Counsel attorney: IIDA Kyu

Same as above: IIDA Kei

Appellee/appellant (Defendant of the first instance): Kogenji Temple

Appellee (Defendant of the first instance): Y

Counsel attorney for both of the defendants of the first instance:
TOKUDA Mikio

Same as above: FUJITA Tsugukiyo

Same as above: TAKAHASHI Toshiro

Same as above: NAKADA Hironori

Main text

1. The judgment in prior instance shall be modified as follows.
2. For the plaintiff of the first instance, the defendants of the first instance shall publish an advertisement shown in I of the Advertisement List attached to this judgment in a manner as shown in II of said list.
3. Any other claims of the plaintiff of the first instance shall be dismissed.
4. All of the claims of the plaintiff of the first instance that were additionally amended in this instance shall be dismissed.
5. The court costs for both first and second instances shall be divided into five portions. One portion shall be borne by the defendants of the first instance, while the remaining four portions shall be borne by the plaintiff of the first instance.

Facts and reasons

The terms used below are the same as those used in the judgment in first instance.

No. 1 Claims (including the claims additionally amended in this instance by the plaintiff of the first instance)

1. Purpose of the plaintiff of the first instance (the "Plaintiff") for filing this appeal

(1) The judgment in prior instance with respect to the Plaintiff's claims dismissed by the court of prior instance shall be revoked.

(2) A defendant of the first instance, Kogenji Temple ("Defendant Kogenji Temple"), shall not offer the Kannon statue in dispute (the Kannon statue after the replacement of the head part shall be hereinafter referred to as the "Kannon Statue") for public viewing until the head part is restored to its original state, i.e., the head part as of the time when the Kannon statue was produced prior to the replacement of the head part (the Kannon statue prior to the replacement of the head part shall be hereinafter referred to as the "Original Kannon Statue.")

(3) The defendants shall jointly pay the Plaintiff six million yen and delay damages accrued thereon at a rate of 5% per annum for the period from September 22, 2007 until the date of full payment for Defendant Kogenji Temple, and for the period from September 23, 2007 until the date of full payment for the defendant of the first instance, Y ("Defendant Y").

(4) Defendant Kogenji Temple shall pay the Plaintiff 100,000 yen per month by the end of each month for the period from December 22, 2009, which is the day following the date of conclusion of oral argument, until the time when the head part of the Kannon Statue is restored to its original state, or, in other words, when the head part is replaced with the head part as of the time when the Original Kannon Statue was produced.

(5) The defendants shall publish an apology advertisement (including a correction advertisement) shown in I of Apology Advertisement List 1 attached to the judgment in prior instance in a manner shown in II of said list.

(6) The defendants shall publish an apology advertisement (including a correction advertisement) shown in I of Apology Advertisement List 2 attached to the judgment in prior instance in a manner shown in II of said list.

(7) The court costs for both first and second instances shall be borne by the defendants.

(8) Declaration of provisional execution

2. Purpose of Defendant Kogenji Temple for filing this appeal

(1) The judgment in prior instance with respect to Defendant Kogenji Temple's claims dismissed by the court of prior instance shall be revoked.

(2) The Plaintiff's claims against Defendant Kogenji Temple shall be dismissed.

(3) The court costs for both first and second instances shall be borne by the Plaintiff.

3. The Plaintiff's claims additionally amended in this instance

(1) Defendant Kogenji Temple shall restore the head part of the Kannon Statue to its original state, or, in other words, replace it with the head part as of the time when the

Original Kannon Statue was produced.

(2) Defendant Kogenji Temple shall not offer the Kannon Statue for public viewing until the head part is restored to its original state, or, in other words, replaced with the head part as of the time when the Original Kannon Statue was produced.

(3) The defendants shall jointly pay the Plaintiff 18 million yen and delay damages accrued thereon at a rate of 5% per annum for the period from September 2, 2009 until the date of full payment.

(4) Defendant Kogenji Temple shall pay the Plaintiff 300,000 yen per month by the end of each month for the period from December 22, 2009 until the time when the head part of the Kannon Statue is restored to its original state, or, in other words, when the head part is replaced with the head part as of the time when the Original Kannon Statue was produced.

No. 2 Background

1. Summary of the background

(1) Claims made in the prior instance

Regarding the Kannon Statue shown in the List of Works attached to this judgment, which is an artistic work jointly produced by the deceased father of the Plaintiff (Pseudonym "T": hereinafter referred to as "T" or, in some cases, "T"), the deceased elder brother R (Pseudonym "R": hereinafter referred to as "R" or, in some cases, "R"), and another elder brother J (Pseudonym "J": hereinafter referred to as "J" or "J"), the Plaintiff alleged that the act of Defendant Kogenji Temple, the owner of the original work, of having Defendant Y replace the head part of the statue after the death of deceased T and deceased R and offering the statue for public viewing constitutes infringement of a moral right of author (the right to maintain integrity) and a copyright (the right of exhibition) of the Plaintiff for the Original Kannon Statue or an act of exploitation of a work in a manner prejudicial to the honor or reputation of the Plaintiff (an act that may be deemed to constitute infringement of a moral right of author) and, if deceased T and deceased R were alive, such act of Defendant Kogenji Temple would constitute infringement of their moral rights of author. The Plaintiff demanded against Defendant Kogenji Temple, [i] an injunction against the offering of the Kannon Statue for public viewing during the period until the head part of the Kannon Statue is restored to its original state, or, in other words, replaced with the head part as of the time when the Original Kannon Statue was produced, under Article 112, paragraph (1), Article 115, and Article 113, paragraph (6) of the Copyright Act (hereinafter referred to as "Act" in some cases) or, as a surviving family member of T and R, under Article 116, paragraph (1), Article 112, paragraph (1), and Article 115 of the Act, and [ii] the restoration of the

head part of the Kannon Statue to its original state, or, in other words, the replacement with the head part of the Original Kannon Statue, under Article 112, paragraph (2), Article 115, and Article 113, paragraph (6) of the Act or, as a surviving family member of T and R, under Article 116, paragraph (1), Article 112, paragraph (2), and Article 115 of the Act. The Plaintiff also demanded against both of the defendants, [iii] the payment of damages for a tort of infringement of the Plaintiff's moral right of author or an act that may be deemed to constitute infringement of a moral right of author (including the damages for the future period until the original state is restored as mentioned above, concerning the damages to be paid by Defendant Kogenji Temple), and [iv] an apology advertisement (including a correction advertisement) shown in Apology Advertisements Lists 1 and 2 attached to this judgment, under Article 115 and, as a surviving family member of T and R, under Article 116, paragraph (1) and Article 115 of the Act.

(2) Claims additionally amended in this instance

In this instance, the Plaintiff made the following additional claims: [v] a claim for restoration to the original state under Article 112, paragraphs (1) and (2) of the Act, and a claim for suspension of the act of offering the statue for public viewing under Article 112, paragraph (1) of the Act, both of which were made on the grounds of the infringement of the right of exhibition inherited from T and R, and [vi] a claim for damages for an act of tort on the grounds of the infringement of the right of exhibition inherent to the Plaintiff, a claim for damages for an act of tort on the grounds of the infringement of the right of exhibition inherited from T and R, and a claim made by the Plaintiff against the defendants for damages for an act of tort on the grounds of the infringement of the deep affection and the feeling of honor as a surviving family member.

(3) "Details of the Claims" of the Plaintiff and the "grounds for the claims"

The "Details of the Claims" of the Plaintiff and the "grounds for the claims" are listed in the following 34 items.

A. The Plaintiff's personal claims

(A) Claim against Defendant Kogenji Temple for the suspension of public viewing of the Kannon Statue until the statue is restored to its original state

[i] Claim based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 112, paragraph (1) of the Act

[ii] Claim based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 115 of the Act

[iii] Claim based on the infringement of the right of exhibition inherent to the Plaintiff as specified in Article 112, paragraph (1) of the Act

- [iv] Claim based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 112, paragraph (1) of the Act
- (B) Claim against Defendant Kogenji Temple for restoration of the Kannon Statue to its original state
- [v] Claim based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 112, paragraph (2) of the Act
- [vi] Claim based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 115 of the Act
- [vii] Claim based on the infringement of the right of exhibition inherent to the Plaintiff as specified in Article 112, paragraph (2) of the Act
- [viii] Claim based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 112, paragraph (2) of the Act
- (C) Claim against each of the defendants for the payment of damages of six million yen and the delay damages accrued thereon
- [ix] Claim for past damages based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 709 and Article 719 of the Civil Code and the delay damages accrued thereon
- [x] Claim for past damages based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 709 and Article 719 of the Civil Code and the delay damages accrued thereon
- (D) Claim against each of the defendants for the payment of damages of six million yen and the delay damages accrued thereon
- [xi] Claim for past damages based on the infringement of the right of exhibition inherent to the Plaintiff as specified in Article 709 and Article 719 of the Civil Code and the delay damages accrued thereon
- (E) Claim against Defendant Kogenji Temple for the payment of damages of 100,000 yen per month until the statue is restored to its original state
- [xii] Claim for future damages based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 709 of the Civil Code
- [xiii] Claim for future damages based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 709 of the Civil Code
- [xiv] Claim for future damages based on the infringement of the right of exhibition inherent to the Plaintiff as specified in Article 709 of the Civil Code
- (F) Claim against the defendants for an apology advertisement
- [xv] Claim for an apology advertisement based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 115 of the Act

[xvi] Claim for an apology advertisement based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 115 of the Act

(G) Claim against the defendants for a correction advertisement

[xvii] Claim for a correction advertisement based on the infringement of the right to maintain integrity inherent to the Plaintiff as specified in Article 115 of the Act

[xviii] Claim for a correction advertisement based on the right inherent to the Plaintiff under Article 113, paragraph (6) of the Act as specified in Article 115 of the Act

B. The Plaintiff's claim as an heir of T and R

(A) Claim against Defendant Kogenji Temple for the suspension of public viewing of the Kannon Statue until the statue is restored to its original state

[i] Claim based on the infringement of the right of exhibition that the Plaintiff inherited from T and R as specified in Article 112, paragraph (1) of the Act

(B) Claim against Defendant Kogenji Temple for restoration of the Kannon Statue to its original state

[ii] Claim based on the infringement of the right of exhibition that the Plaintiff inherited from T and R as specified in Article 112, paragraph (2) of the Act

(C) Claim against each of the defendants for the payment of damages of six million yen and the delay damages accrued thereon

[iii] Claim for past damages based on the infringement of the right of exhibition that the Plaintiff inherited from T and R as specified in Article 709 and Article 719 of the Civil Code and the delay damages accrued thereon

(D) Claim against Defendant Kogenji Temple for the payment of damages of 100,000 yen per month until the statue is restored to its original state

[iv] Claim for future damages based on the infringement of the right of exhibition that the Plaintiff inherited from T and R as specified in Article 709 of the Civil Code and the delay damages accrued thereon

C. The Plaintiff's claim as a surviving family member of T and R for protection of the moral interests of T and R

(A) Claim against Defendant Kogenji Temple for suspension of offering the Kannon Statue for public viewing until the statue is restored to its original state

[i] The Plaintiff's claim as a surviving family member of T and R based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 112, paragraph (1) of the Act

[ii] The Plaintiff's claim as a surviving family member of T and R based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 115 of the Act

[iii] The Plaintiff's claim as a surviving family member of T and R under Article 113, paragraph (6) of the Act as specified in Article 60, Article 116, and Article 112, paragraph (1) of the Act

(B) Claim against Defendant Kogenji Temple for restoration of the Kannon Statue to its original state

[iv] The Plaintiff's claim as a surviving family member of T and R based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 112, paragraph (2) of the Act

[v] The Plaintiff's claim as a surviving family member of T and R based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 115 of the Act

[vi] The Plaintiff's claim as a surviving family member of T and R under Article 113, paragraph (6) of the Act as specified in Article 60, Article 116, and Article 112, paragraph (2) of the Act

(C) Claim against the defendants for an apology advertisement

[vii] The Plaintiff's claim as a surviving family member of T and R for an apology advertisement based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 115 of the Act

[viii] The Plaintiff's claim as a surviving family member of T and R for an apology advertisement under Article 113, paragraph (6) of the Act as specified in Article 60, Article 116, and Article 115 of the Act

(D) Claim against the defendants for a correction advertisement

[ix] The Plaintiff's claim as a surviving family member of T and R for a correction advertisement based on the infringement of the right to maintain integrity as specified in Article 60, Article 116, and Article 115 of the Act

[x] The Plaintiff's claim as a surviving family member of T and R for a correction advertisement under Article 113, paragraph (6) of the Act as specified in Article 60, Article 116, and Article 115 of the Act

D. The Plaintiff's inherent claim for the payment of damages as a surviving family member of T and R

(A) Claim against each of the defendants for the payment of damages of six million yen and the delay damages accrued thereon

[i] The Plaintiff's inherent claim as a surviving family member of T and R for past damages as specified in Article 709 and Article 719 of the Civil Code and the delay damages accrued thereon

(B) Claim against Defendant Kogenji Temple for the payment of damages of 100,000

yen per month until the statue is restored to its original state

[ii] The Plaintiff's inherent claim as a surviving family member of T and R for future damages as specified in Article 709 of the Civil Code

2. Facts undisputed by the parties (the facts for which no evidence has been presented should be considered to be the facts undisputed by the parties or the facts found based on the entire import of the oral argument)

(1) Parties

A. The Plaintiff is a sculptor engaged in both modern sculpturing and Buddhist statue sculpturing as a business.

Deceased father T and mother L of the Plaintiff ("Deceased L") had three children; the oldest, deceased son R, the second son J, and the third son, the Plaintiff (Exhibits Ko No. 47 to No. 50).

Deceased T and deceased R were sculptors engaged in the sculpturing of Buddhist statues as a business. As described above, the pseudonyms of deceased T and deceased R were "T" and "R," respectively. T and R passed away on July 29, 1988 and September 28, 1999, respectively. R had neither a spouse nor child (Exhibits Ko No. 49 and No. 50).

J was also a sculptor engaged in the sculpturing of Buddhist statues as a business. The pseudonym of J was "J." He discontinued his sculpturing business in 1998.

B. Defendant Kogenji Temple is a religious corporation managing and operating the Kogenji Temple, which is a temple of Jodo Shu.

C. Defendant Y is a sculptor engaged in the sculpturing of Buddhist statues as a business (Pseudonym: "Shunkyo"). From around 1981 until around September 1989, Defendant Y was a pupil of deceased R (R) and became independent around September 1989.

(2) Production of the Original Kannon Statue

A. Kogenji Temple had a Kannon hall that enshrined a wood-carved eleven-headed Kannon Bosatsu statue which was built in 1697 in the Edo era ("former Great Kannon statue"). The former Great Kannon statue was a Buddhist statue that had the style and features of the principal image of Buddha of the Hasedera Temple in Nara prefecture, i.e., an eleven-headed Kannon Bosatsu statue ("Hasedera-style eleven-headed Kannon Bosatsu statue"). The former Great Kannon statue was shown in the *Edo meisho zue* (Edo Tourism Spot Book) published in the Tempou Era (1830 to 1844) and had thus attracted worshipers since the Edo Era as the "Komagome Great Kannon."

However, the former Great Kannon statue was destroyed together with the Kannon hall by fire in the Great Tokyo Air Raids on May 25, 1945.

B. (A) Around the beginning of 1987, deceased M, who served as the former chief priest of the Kogenji Temple and also as a representative officer of Defendant Kogenji Temple ("former chief priest"), placed an order with T and R to produce a new eleven-headed Kannon Bosatsu statue in order to reconstruct the Komagome Great Kannon.

Subsequently, from around May 1987, the sculpturing of the Original Kannon Statue (woodcarving process) was commenced in a studio, which doubles as the residence of T, R, and J, in Nakano-ku, Tokyo ("Studio").

(B) After the completion of the woodcarving process, the Original Kannon Statue was shipped from the Studio on March 12, 1990 and delivered to another studio built in the premises of the Kogenji Temple, where the lacquering and gilding processes were to be conducted ("Lacquering Studio").

On the same day, the former chief priest held a Buddhist service to commemorate the delivery of the Original Kannon Statue to the Lacquering Studio. From that day, the lacquering and gilding processes were commenced by lacquer painters (lacquering craftworkers).

(C) After the completion of the lacquering and gilding processes, the Original Kannon Statue was placed within the Kannon hall ("Kannon Hall") newly built on the premises of the Kogenji Temple.

Subsequently, the former chief priest held a ceremony to consecrate the newly-made Buddhist statue on May 18, 1993 ("Komagome Great Kannon consecration ceremony"). Since then, the Original Kannon Statue has been offered for viewing by members of the public, such as worshippers.

C. Inside the body part of the Original Kannon Statue, the statements "Great Buddhist Sculptor & Director T" and "Producers R, J, X / Pupil Y" are written in sumi (black ink) (Exhibit Ko No. 10), and inside the foot tenon of said statue, the statements "Director T" and "Producers R, J, X, Y" are written in sumi (Exhibit Otsu No. 3).

D. The Original Kannon Statue is an artistic work. R is an author thereof.

(3) Replacement of the head part of the statue by the defendants

A. After the former chief priest passed away on December 26, 1994, priest A ("Priest A") became the chief priest of the Kogenji Temple. On February 23, 1995, Priest A became a representative officer of Defendant Kogenji Temple.

B. During the period from around 2003 to around 2006, Defendant Kogenji Temple placed an order with Defendant Y to produce a new head part for the Original Kannon Statue and replace the old head part with the new one. Defendant Y fulfilled this order and carried out the replacement.

Defendant Kogenji Temple placed the Kannon Statue, which was created by replacing the head part of the Original Kannon Statue, in the Kannon Hall of the Kogenji Temple and offered it for viewing by members of the public, such as worshippers.

The head part prior to the replacement is shown in the three photographs on the right side of the Photograph List attached to this judgment, while the head part after the replacement is shown in the three photographs on the left side of said list.

C. The defendants detached the head part (the head part prior to the replacement) from the Original Kannon Statue and have stored it in the Kannon Hall without any change.

3. Issues

The issues disputed in this case are as follows.

[Issues in the prior instance]

(1) Whether or not the Plaintiff is a co-author of the Original Kannon Statue (Issue 1)

(2) Whether or not the defendants' act of replacing the head part of the Original Kannon Statue and Defendant Kogenji Temple's act of offering it for public viewing after the replacement constitute infringement of the Plaintiff's moral rights of author (Article 20 of the Act, the right to maintain integrity) for the Original Kannon Statue. If this is the case, whether or not the Plaintiff is entitled to seek, under Article 112, paragraphs (1) and (2) of the Act, an injunction against Defendant Kogenji Temple's act of offering of the Kannon Statue for public viewing during the period until the head part is restored to its original state, or, in other words, it is replaced with the head part of the Original Kannon Statue and to seek the aforementioned restoration itself (Issue 2)

(3) Whether or not the Plaintiff is entitled to seek, as a measure for restoration, etc. of honor under Article 115 of the Act, an injunction against Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing during the aforementioned period until the head part of the statue is restored to its original state and to seek the aforementioned restoration itself (Issue 3)

(4) Whether or not the aforementioned act of the defendants or Defendant Kogenji Temple constitutes an act of exploitation of a work in a manner prejudicial to the honor or reputation of the author (Article 113, paragraph (6) of the Act) and may be deemed to constitute an act of infringement on the moral rights of author. If this is the case, whether or not the Plaintiff is entitled to seek, under Article 112, paragraphs (1) and (2) of the Act or as a measure for restoration, etc. of honor under Article 115 of the Act, an injunction against Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing during the aforementioned period until the head part of the statue is restored to its original state and to seek the aforementioned restoration itself (Issue 4)

(5) Whether or not the Plaintiff is entitled to seek, under Article 112, paragraphs (1) and (2) of the Act, an injunction against Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing during the aforementioned period until the head part of the statue is restored to its original state and to seek the aforementioned restoration itself by alleging that Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing after the replacement of the head part constitutes infringement of the Plaintiff's copyright (the right of exhibition) as the author of the original work from which the Kannon Statue was created as a derivative work (Issue 5)

(6) Whether or not the Plaintiff is entitled to seek damages from the defendants based on the infringement of the Plaintiff's moral rights of author and an act of tort that may be deemed to constitute infringement of the Plaintiff's moral rights of author (including future damages from Defendant Kogenji Temple for the period until the aforementioned restoration of the head part) and the amount of damage suffered by the Plaintiff that should be compensated by the defendants (Issue 6)

(7) Whether or not the Plaintiff is entitled to seek, as a surviving family member of T and R, under Article 20, Article 113, paragraph (6), Article 60, Article 116, paragraph (1), Article 112, paragraphs (1) and (2), and Article 115 of the Act, an injunction against Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing during the aforementioned period until the head part of the statue is restored to its original state and to seek the aforementioned restoration itself (Issue 7)

(8) Whether or not the Plaintiff is entitled to seek, personally under Article 115 of the Act, and as a surviving family member of T and R, under Article 116, paragraph (1) and Article 115 of the Act, an apology advertisement shown in Apology Advertisement Lists 1 and 2 attached to this judgment as an appropriate measure to restore the honor or reputation of T and R (including a correction advertisement) (Issue 8)

[Issues in this instance]

(9) Whether or not the Plaintiff is entitled to seek restoration to the original state under Article 112, paragraph (2) of the Act and the suspension of the act of offering the statue for public viewing under Article 112, paragraph (1) of the Act on the grounds of the infringement of the right of exhibition that the Plaintiff inherited from T and R (Issue 9)

(10) Whether or not the Plaintiff is entitled to seek damages for the act of tort on the grounds of [i] the infringement of the Plaintiff's own right of exhibition, [ii] the infringement of the right of exhibition that the Plaintiff inherited from T and R, and [iii] the infringement of the deep sense of affection and honor as a surviving family member, and the amount of damage suffered by the Plaintiff that should be compensated by the defendants (Issue 10)

No. 3 Allegations of the parties concerned

[Allegations regarding the issues in the prior instance]

The allegations presented in the prior instance and the additional allegations presented in this instance are as follows.

1. Issue 1 (the joint authorship of the Plaintiff)

(1) Allegation of the Plaintiff

The Original Kannon Statue is a work jointly produced by T, R, J, and the Plaintiff. The Plaintiff is a co-author of the statue for the following reasons.

A. Background of the production of the Original Kannon Statue

(A) The Plaintiff was born in a family that has traditionally engaged in the production of Buddhist statues, etc. since the Edo era (the N Family). The Plaintiff has operated a common studio to produce Buddhist statues, etc. ("Studio") jointly with Father T and Brothers R and J, who were all sculptors of Buddhist statues. Whenever the Studio receives an order for work, the Plaintiff shared work with them in a flexible manner in accordance with the nature, scale, delivery date, etc. of the work and they cooperated with each other to engage in the carving, etc. of Buddhist statues as a business.

Defendant Kogenji Temple placed an order with the N Family to produce the Original Kannon Statue. At that time, R, as a representative of the N Family, was involved in the negotiations, etc. with the former chief priest of the Kogenji Temple.

The purpose of the order placed by Defendant Kogenji Temple was to produce a wood-carved eleven-headed Kannon Bosatsu statue in order to reconstruct the "Komagome Great Kannon," which was destroyed by fire during the war. Therefore, the plan was to produce a Kannon statue in accordance with the style of the Hasedera-style eleven-headed Kannon Bosatsu statue.

(B) a. The production of a wood-carved Buddhist statue is roughly divided into the following processes: [i] the process of extracting a piece of wood from a raw material (woodcutting), [ii] the process of carving a Buddhist statue from the piece of wood by applying sculpturing techniques with the use of hatchet, chisel, U-shaped gouge, etc. (woodcarving), and [iii] after the process of woodcarving, the process of painting, such as lacquering and finally inserting eyes (the process of coloring the eyes with chalk powder).

In the case of a Buddhist statue produced by the "parquet method," where a statue is divided into several parts for production, the material for a Buddhist statue is not a single piece of wood but wooden material consisting of multiple square timbers patched together by the use of tenon or glue (this process of bonding timbers is called "wood patching").

Generally, the process of woodcarving may be carried out in steps, such as "rough carving" (the process of carving out a rough shape of a Buddhist statue from a piece of wood), "detailed carving" (the process of smoothing out the roughly chiseled surface and carving the overall shape of the Buddhist statue), and "finishing" (the process of adjusting each part of the statue in consideration of the overall balance, etc. of the statue and carving the details of the statue). In the case of a statue produced by the parquet method, the head part will be produced first. After the completion of the rough carving or detailed carving of the head part, the body part and arm parts will be produced in most cases. Other parts, such as a nimbus and a pedestal, will be produced in tandem with the above-mentioned production process.

After the completion of the detailed carving of each of the aforementioned parts, the process of finishing the entire statue will be commenced. In the case of a large scale Buddhist statue like the Original Kannon Statue, it is common to dismember the statue and hollow out each part of the statue at a certain point of time during the period from the completion of rough carving until the completion of detailed carving and subsequently to put those parts back together. This process is called "inside hollowing."

b. The production of the Original Kannon Statue was carried out in the following steps.

[i] The process of patching pieces of wood to be used as the material for each part of the Original Kannon Statue was carried out from around May to around July 1987. The woodcarving process was commenced with the rough carving of the head part and completed by around mid-June 1987. The inside hollowing of the head part was also conducted.

After around the summer of 1987, the roughly-carved head part was attached to the wood material for the body part. Then, the rough carving of the body part was commenced.

[ii] Subsequently, over the year 1988, the detailed carving of the head part (including the production of "transformed images of Buddha" to be attached to the head part), the rough carving of the body part, the detailed carving thereof, and the rough carving of the arm parts were carried out in succession. While these processes were carried out, the rough carving of a nimbus, pedestal, etc. was simultaneously taking place.

While these steps were underway, T passed away on July 29, 1988.

[iii] R suffered a cerebral infarction on May 6, 1989 and was hospitalized from that day until June 24, 1989.

While he was hospitalized, on June 14, 1989, the Plaintiff invited the former chief priest of Defendant Kogenji Temple to the Studio. Inside the body part of the Original Kannon Statue, the statements "Great Buddhist Sculptor & Director T" and "Producers

R, J, X / Pupil Y" were written in sumi (black ink) in the presence of the former chief priest (No. 2, 2. (2) C. above).

By this time, the detailed carving of each of the aforementioned parts was completed for the Original Kannon Statue. The process of finishing the entire statue was about to be commenced.

[iv] The process of finishing the Original Kannon Statue was commenced from around June 1989 and completed around the beginning of March 1990.

After the completion of the woodcarving process, the Original Kannon Statue was shipped from the Studio on March 12, 1990 and delivered to the Lacquering Studio.

Subsequently, after the completion of the lacquering and gilding processes, the process of consecrating the newly-made Buddhist statue by inserting the eyes was carried out. Finally, the production of the Original Kannon Statue was completed.

c. Sharing of the work

In the course of the production processes of the Original Kannon Statue as specified in b. above, the work was basically shared among T, R, J, and the Plaintiff as follows.

[i] The overall concept and design of the Original Kannon Statue was determined through negotiations among T, R, J, and the Plaintiff.

[ii] The rough carving of the head part of the Original Kannon Statue was carried out mainly by T and R. The detailed carving thereof was carried out mainly by R. The detailed carving and finishing processes of the transformed images of Buddha, which is a portion of the head part, were carried out by the Plaintiff.

[iii] The rough carving and the detailed carving of the body part of the Original Kannon Statue were carried out mainly by R.

[iv] The rough carving and the detailed carving of the arm parts, nimbus, and pedestal of the Original Kannon Statue were carried out mainly by J and the Plaintiff.

[v] The finishing of the entire Original Kannon Statue after the completion of the detailed carving was carried out mainly by the Plaintiff.

[vi] The consecration of the newly-made Buddhist statue by inserting the eyes after the completion of the lacquering and gilding processes was carried out by the Plaintiff.

(C) Evidentiary facts that indicate the authorship of the Plaintiff

a. The following are the essential facts that indicate, among other things, that the Plaintiff was engaged in the production of the Original Kannon Statue. These facts may be considered to support the presumption of authorship under Article 14 of the Act.

[i] The Plaintiff had sufficient academic knowledge and experience in the field of sculpturing of Buddhist statues. In fact, the Plaintiff produced various Buddhist statues not only independently but also, in the case of especially large-scale Buddhist statues,

jointly with his father T, the oldest brother R, and the second oldest brother J, all of whom were members of the N Family, as a group of sculptures of Buddhist statues, before and after the production of the Original Kannon Statue.

[ii] When the head part was exhibited in a Buddhism art sculpture exhibition for one week from August 23, 1988, the former chief priest talked to K, who was engaged in the designing and construction management of the Kannon Hall, about the producers of the Original Kannon Statue by stating "The work is led by R in cooperation with all the members of the N Family." Moreover, in around April or May 1990, the former chief priest introduced the Plaintiff by stating "He is one of the N Family members who are all sculptures of Buddhist statues. He greatly contributed to the construction of this Kannon Statue."

[iii] In around May 1993, when a ceremonial photograph was taken to commemorate the delivery of the Original Kannon Statue from the Lacquering Studio to the Kannon Hall, where the statue would be enshrined, the Plaintiff was treated in the same manner as R, the lacquer painter, and others who were actually involved in the production and completion of the Original Kannon Statue.

The former chief priest invited the Plaintiff as well as R to the ceremony to consecrate the newly-made Buddhist statue held on May 18, 1993. When a ceremonial photograph was taken in the ceremony, the Plaintiff was treated differently from many other participants in the ceremony, or, in other words, treated with such level of respect that was at least comparable to that given to R, K, the lacquer painter, and others who were actually involved in the production and completion of the Original Kannon Statue or the Kannon Hall. In the speech that the former chief priest gave in the aforementioned Buddhist service, he talked about the production and completion of the Original Kannon Statue and introduced T as "director," R as "producer," and three persons, namely, J, the Plaintiff, and Defendant Y, as "cooperators" in charge of the production of the "pedestal, nimbus, etc." There is a videotape in which the former chief priest introduced the Plaintiff, in the aforementioned speech, as one of the co-authors of the Original Kannon Statue and expressed his gratitude (Exhibit Ko No. 71).

[iv] In the Shukyo Kougei Shimbun (Religious Art Work Newspaper) (Exhibit Ko No. 1) published on June 15, 1995, it was reported that "The recently completed work (of R) is the Great Kannon of the Komagome Kogenji Temple. The younger brothers, Mr. J and Mr. X (a member of the Kohdo Bijutsu Japan (action art association)), who always work together with R, had been great help" (Exhibit Ko No. 1). Moreover, in an introduction letter dated July 30, 1988 written by Dr. Z, who was in charge of deceased T (Exhibit Ko No. 34), it was mentioned, among other things, that "(T) is producing the

Kannon Statue with his three sons."

[v] In the seating chart prepared by the current chief priest of the Kogenji Temple, Priest A, (the representative of Defendant Kogenji Temple) in preparation for the Buddhist service held on November 26, 2000 in order to commemorate the sixth anniversary of the death of the former chief priest (Exhibit Ko No. 44), the Plaintiff was introduced as a "joint sculptor of the reconstructed Komagome Great Kannon." Furthermore, in the dining table seating chart prepared by the current chief priest, the current chief priest introduced the Plaintiff as a "joint sculptor of the reconstructed Komagome Great Kannon."

b. The following facts concerning events after the production of the Original Kannon Statue indicate that the Plaintiff is a joint producer. They may be regarded as the facts that support the presumption of authorship under Article 14 of the Act.

[i] In around 2003, Priest A (the current chief priest) decided on the reconstruction of the head part of the Original Kannon Statue and notified the Plaintiff of this intention to place an order with Defendant Y to reconstruct the head part of the Original Kannon Statue, seeking consent from the Plaintiff.

[ii] When receiving the content-certified mail sent by the counsel attorney of the Plaintiff on the grounds, among other things, that the replacement of the head part of the Original Kannon Statue constitutes infringement of the right to maintain integrity of the Plaintiff, who is a joint producer of the Original Kannon Statue, neither Priest A (the current chief priest) nor Defendant Y disputed the argument that the Plaintiff is a joint producer of the Original Kannon Statue. The argument that the Plaintiff is a joint producer of the Original Kannon Statue was not disputed until the counsel attorney presented a counterargument in this lawsuit.

(D) Evidentiary facts indicating that T is an author

Since T was the leader of the N Family who are a group of sculptors of Buddhist statues, it is reasonable to presume that, after accepting an order from the former chief priest, T produced the Original Kannon Statue in collaboration with the second son J, and the third son, the Plaintiff, as an operation of the family business.

The following evidentiary facts indicate that T was engaged in the production of the Original Kannon Statue. They may be regarded as the facts that support the presumption of authorship under Article 14 of the Act.

a. On June 14, 1987, inside the roughly carved head part, the former chief priest wrote the statement "Komagome Great Kannon," etc. in Sanskrit characters in sumi (black ink) in the presence of not only R but also T. At that time, T, who was closer to said head part than R, assisted the former chief priest to write the statement in sumi and was

captured in a ceremonial photograph. Said ceremonial photograph was used in a newspaper article published on August 9, 1988 concerning the reconstruction of the "Komagome Great Kannon."

b. For about six months from 1988, T was certainly in a slight state of dementia and started suffering edema from late May 1988, becoming unable to visit a hospital. However, when the carving of the Original Kannon Statue was commenced in around May 1987, T was "basically" "healthy enough to participate in the work."

c. In the introduction letter to a medical university written by the doctor in charge of T on July 29, 1988, it was stated that "(T is) producing the Kannon Statue with his three sons."

d. The written response by the present chief priest to the content-certified mail sent by the counsel attorney of the Plaintiff contained such expressions as "the encounter between the former chief priest M of the Kogenji Temple and Mr. R and Mr. T has led to a concrete reconstruction project of the Komagome Great Kannon. (omitted) I would like to thank both of them," "the statue to which Mr. T has devoted all of his energy," "the face of the statue that Mr. T carved with the most detailed care," and "the head part of the statue sculpted by Mr. T." Also, in said written response, neither the present chief priest nor Appellee Y disputed the argument that T is a joint producer of the Original Kannon Statue. The argument that T is a joint producer of the Original Kannon Statue was not disputed until the counsel attorney presented counterargument in this lawsuit.

(E) In consideration of the facts described above, the Original Kannon Statue may be regarded as a work jointly produced by four authors, namely, T, R, J, and the Plaintiff.

In particular, the Plaintiff led the work of finishing the entire statue after R collapsed due to a stroke in order to achieve the completion of the woodcarving process of the Original Kannon Statue. Therefore, it may be said that the Plaintiff was involved in the production of the Original Kannon Statue in a creative manner.

(F) On the other hand, as described below, the defendants argue that the Original Kannon Statue was produced by R and Defendant Y and that the Plaintiff was not involved in the production of the Original Kannon Statue.

However, as shown in (B) c. above, the Plaintiff shared the work with T, R, and J and jointly carried out the production of the Original Kannon Statue. On the other hand, Defendant Y was employed by R at the time of the production of the Original Kannon Statue and was merely assisting only the work of R under the specific instructions and supervision of R and was therefore not engaged in the production of the Original Kannon Statue in a creative manner.

Therefore, the defendants' argument mentioned above is groundless.

B. Presumption of authorship under Article 14 of the Act

(A) Article 14 of the Act specifies that "A person whose name (omitted) or whose widely known pen name (omitted) is indicated as the name of the author in the customary manner on the original of his work (omitted) shall be presumed to be the authorship of such work."

It is a long-standing common practice to write the name of the author in sumi inside the body of a Buddhist statue. It is also a long-standing common practice to write in sumi inside the body of a Buddhist statue not only the name or pseudonym of the Buddhist statue sculptor that is the "actual producer," but also the name or pseudonym of the "director," or, in other words, "great sculptor" in charge of the entire production who plays the role of the "chief executive editor" as the name of an author.

In this way, it is reasonable to interpret that any person whose name is written in sumi inside the body of a Buddhist statue as the "director" or "producer" may be considered as a person whose name is "indicated as the name of the author in the customary manner."

As mentioned above, the statements, "Director T" and "Producers R, J, X" were written in sumi inside the body of the Original Kannon Statue (inside the body part) and the foot tenon. "X" is the name of the Plaintiff. "T," "R," and "J" are famous as the pseudonyms of deceased T, deceased R, and J, respectively.

Therefore, deceased T (T), deceased R (R), J (J), and the Plaintiff may be presumed to be co-authors of the Original Kannon Statue under Article 14 of the Act.

C. Summary

As described above, the Plaintiff and T are co-authors of the Original Kannon Statue.

(2) Counterargument of the defendants

R and Defendant Y produced the Original Kannon Statue. The Plaintiff was not involved in the production of the Original Kannon Statue at all, at least, not involved in a creative manner. Therefore, the Plaintiff is not a co-author of the Original Kannon Statue.

The reasons are as follows.

A. Regarding the explanation of the background of the production of the Original Kannon Statue

(A) From 1987, R and Defendant Y started the woodcarving of the Original Kannon Statue and, in September 1989, completed the woodcarving process with only the lacquering and gilding processes still remaining. Thus, the producers of the Original Kannon Statue are R and Defendant Y. During the period of about one year from around

June 1986 to around June 1987, a person D ("D"), who was studying the sculpturing of Buddhist statues under the supervision of R and Defendant Y, was involved in the production of the Original Kannon Statue as an assistant. However, T, J, and the Plaintiff were not involved in the production of the Original Kannon Statue at all.

The background of the production of the Original Kannon Statue is as follows.

a. In around January 1987, the former chief priest placed an order with R to reconstruct the Komagome Great Kannon, which has led to a concrete reconstruction project of the Komagome Great Kannon.

R designed a Komagome Great Kannon, calculated the necessary amount of Hinoki material (Japanese cypress), estimated the costs and time necessary for production, and presented the estimated production costs to Defendant Kogenji Temple.

As Defendant Kogenji Temple accepted the estimated production costs presented by R, the production of the Original Kannon Statue was commenced.

b. By May 5, 1987, the Hinoki material ordered by R was delivered to the Studio where R and defendant Y were working.

Defendant Y, together with D, created flat surfaces on the Hinoki material by using an electric molding plane and a manual molding plane and created a large chunk of wood by bonding multiple Hinoki square timbers together. Then, R started carving said chunk of wood created by Defendant Y and D in order to produce the head part of the statue.

c. After creating the chunk of wood for the production of the head part, Defendant Y started producing the body part and the nimbus.

First, Defendant Y, together with D, created flat surfaces on the Hinoki material by using a molding plane and created a table-shaped chunk of wood to produce the nimbus and another chunk of wood to produce the body part by bonding multiple Hinoki square timbers together.

Next, Defendant Y drew a picture of the nimbus on which Sanskrit characters were written indicating seven Goddesses of Kannon in the arabesque design and obtained the consent of R. Then Defendant Y started carving the table-shaped chunk of wood into the shape of the nimbus and copied the nimbus picture onto the carved wood, further carving it by using an electric drill, chisel, etc. In around January 1989, the nimbus was completed.

d. In around June 1987, R completed the rough carving of the head part of the statue and asked the former chief priest, Priest A, etc. who visited the Studio on June 14, 1987 to check the head part. At that time, R said to the former chief priest, etc., "If you do not like it, I will make it over." In response, as the head part of the Original Kannon Statue

was still in the state of rough carving, was not revealing any defects yet, and it was not yet apparent how it would look when completed, the former chief priest declined the offer of R by saying that "You shouldn't say such a thing because you have devoted so much to creating it."

e. After completing the rough carving of the head part of the statue, Defendant Y started the work of inserting the head part into the body part.

First, Defendant Y carried out the rough carving of the chunk of wood for the body part and made a hole with the depth of several dozen centimeters by the use of an electric drill.

On the other hand, due to old age, R was unable to handle heavy tools, since he would quickly have suffered short breath and knee pains. Therefore, he was unable to engage in the work that required the handling of a heavy electric drill and many hours of standing posture (in short, the work of roughly carving the body part of the statue and making a hole to insert the head part).

For this reason, Defendant Y had to carry out the aforementioned work single-handedly and took one month to complete the series of processes from the rough carving of the head part to the insertion of the head part to the body part.

Next, after completing the insertion of the head part into the body part, R and Defendant Y started carving other parts of the statue.

By using the chain block attached to the ceiling of the Studio, Defendant Y raised the body part of the statue to standing position; it had previously been laid down for ease of work. Then, Defendant Y built a metal pipe scaffold surrounding the statue. Defendant Y climbed said scaffold and carved the Original Kannon Statue by the use of a chainsaw and chisel, etc. When working on the scaffold, it was necessary to hold an extremely unstable posture. Since R, who had bad knee joints, was unable to climb the scaffold, Defendant Y carried out the aforementioned work alone.

After completing the carving of the body part, Defendant Y started carving the arm parts and created a tenon on each part in order to attach them to the body part. For the purpose of preventing cracking and reducing the weight of the statue, Defendant Y laid down the statue and separated the front part of the body from the rear part, and started hollowing out the body of the statue.

f. In around May 1989, R suffered a cerebral infarction and suddenly collapsed. He was hospitalized for about one month.

Since Defendant Y had been producing the Original Kannon Statue jointly with R until the hospitalization of R, Defendant Y stopped producing the Original Kannon Statue until R left the hospital.

While R was hospitalized, the Plaintiff suddenly visited the Studio and gave Defendant Y his opinion about the production of the Original Kannon Statue. Defendant Y felt displeased about this because the Plaintiff, who had not been involved in the production of the Original Kannon Statue at all until then, learned about the hospitalization of R and suddenly started getting involved in the production of the Original Kannon Statue. Since Defendant Y spoke to the Plaintiff to that effect, the Plaintiff did not try to express his opinion and attempt to get involved in the production of the Original Kannon Statue.

While R was hospitalized, the former chief priest wrote prayers in the hollowed out body of the statue and then, wrote "Director T," "Producers R, J, X." Defendant Y was also written as "Y."

g. After R left the hospital in June 1989, the production of the Original Kannon Statue was resumed.

In around June 1989, the production of the Original Kannon Statue was already in the final stage.

Defendant Y laid down the Original Kannon Statue and carried out the process of finishing the statue, such as smoothing out its surface by the use of a carving knife.

After leaving the hospital, R showed almost no aftereffects of the disease, such as speech disability and paralysis of the body. However, due to the significant deterioration of the physical strength of R, Defendant Y carried out the production of the Original Kannon Statue under the supervision of R.

Subsequently, all of the woodcarving process of the Original Kannon Statue was completed in September 1989, with only the lacquering and gilding processes left to be done. In this month, Defendant Y became independent from R. Since around 1988, Defendant Y had notified R of his intention to become independent after the completion of the Original Kannon Statue and obtained R's consent.

h. In around October 1989, having been notified by R of the completion of the woodcarving process, the former chief priest, together with Priest A, visited the Studio on October 10, 1989 and took photographs of the Original Kannon Statue for which all of the woodcarving process was completed (Exhibits Otsu No. 30-1, No. 30-2, No. 31-1, No. 31-2).

Then, the former chief priest contacted a lacquer painter in order to set a date for a discussion about the lacquering process, costs, etc. However, due to the busy schedule of the lacquer painter, the former chief priest could not set a date. Also, there was a change in the designer of the Kannon Hall ("Kannon Hall") where the Original Kannon Statue was to be enshrined. For these reasons, the former chief priest was not able to

hold a meeting until the beginning of 1990 to discuss with the lacquer painter, designer, and people related to the Kogenji Temple about the lacquering and gilding processes. In this meeting, it was decided to build a studio for the lacquering and gilding processes ("Lacquering Studio") within the premises of the Kogenji Temple and to deliver the Original Kannon Statue to the Lacquering Studio by March 23, 1990, on which date the term of the fire insurance for the Original Kannon Statue would expire.

Subsequently, the construction of the Lacquering Studio was completed. On March 12, 1990, the Original Kannon Statue was delivered to the Lacquering Studio and a Buddhist service was held to commemorate the delivery.

(B) a. T, J, and the Plaintiff were not involved in the production of the Original Kannon Statue at all.

First, from around 1986, T started suffering "encephalodialysis" and feeling sick. As of May 1987, when the production of the Original Kannon Statue was commenced, he was 87 years old and did not have much energy for the production of Buddhist statues. In addition, he was also suffering minor cerebral infarction. In fact, he was already retired from the production of Buddhist statues and was not involved in the production of the Original Kannon Statue at all.

Regarding the health of T at the time of the production of the Original Kannon Statue, Witness D of the prior instance testified as follows: "Although he was basically present, he himself was not carving with a chisel, if my memory is correct" (page 12 of the Report of said witnesses). T was unable to get involved in the production of the Original Kannon Statue due to his poor health.

Next, J started suffering with the disease from around 1980 and spent most of his time in his room. Around the time when the Original Kannon Statue was being produced, his health did not improve. He was in his room most of the time due to his illness and was not involved in the production of the Original Kannon Statue at all.

Furthermore, the Plaintiff was specialized in the creation of abstract sculptures in the field of modern art. At the time when the Original Kannon Statue was being produced, he was involved in the production of a work to be presented in an exhibition of the Kohdo Bijutsu Japan (action art association) and was teaching at the Musashino Art University as an instructor. Therefore, the Plaintiff had little time to assist the production of the Original Kannon Statue and was not involved in the production of the Original Kannon Statue at all.

b. Moreover, after Defendant Y began working independently in October 1989, even if the Plaintiff had carried out some kind of finishing process, the process would involve nothing but mere checking and cannot be regarded as creative involvement. Thus, the

Plaintiff may not be considered as a co-author of the Original Kannon Statue.

(C) Exhibits Ko No. 1, No. 34, and No. 44 presented by the Plaintiff do not provide grounds for proving that the Plaintiff was engaged in the production of the Original Kannon Statue.

First, in the article introducing R published in the Shukyo Kougei Shimbun (Religious Art Work Newspaper) (Exhibit Ko No. 1) on June 15, 1995, it was stated that "(Mr. J and Mr. X (a member of the Kohdo Bijutsu Japan (action art association), who always work with me) were of great help." According to this article, the three brothers, namely, R, J, and the Plaintiff, seem to have always been working together. However, the Plaintiff has been independently conducting activities different from those of T and R after finishing studying in France and returning to Japan. For example, the Plaintiff used a studio in Toride-shi, Ibaraki, which is completely separate from the studio of T and R, and taught at a university as an instructor and acted as a member of the Kohdo Bijutsu Japan (action art association). Therefore, the argument that the Plaintiff has long been working with R and J is incorrect. Moreover, according to the aforementioned article, R seems to have been actively engaged in the sculpturing of Buddhist statues in 1995. However, there is no such fact. The aforementioned article is extremely unreliable and does not provide sufficient grounds for proving that the Plaintiff is an author of the Original Kannon Statue.

As described above, the Plaintiff has been separate from the N Family and engaged in artistic activities such as abstract sculpturing and action art as a completely independent artist. Among the brothers of the N Family, the Plaintiff is the only one who does not have a pseudonym as a sculptor of Buddhist statues and has not become a member of the Bukkyo Bijutsu Kyokai (Buddhist art association), despite producing Buddhist statues several times. Although the Original Kannon Statue is the largest Buddhist statue that R has ever produced, it does not necessarily mean that the Plaintiff was involved in the production of the Original Kannon Statue.

Next, in the introduction letter dated July 30, 1988 written by Doctor Z (Exhibit Ko No. 34), it was stated that "(T is) producing the Kannon Statue of the family temple of Mr. O together with his three sons." The parishioners of Defendant Kogenji Temple do not include a doctor named O or any of his relatives. Therefore, the "Kannon Statue of the family temple of Mr. O" may not be interpreted as referring to the Original Kannon Statue. It is uncertain with what level of accuracy a person called Doctor Z understood the background concerning the Original Kannon Statue in the first place. It is clear that the aforementioned statement is extremely unreliable as evidence.

Furthermore, in the seating chart prepared for the sixth anniversary of the death of

the former chief priest (Exhibit Ko No. 44), the current chief priest, Priest A, introduced the Plaintiff as a "joint sculptor of the reconstructed Komagome Great Kannon." Since the Plaintiff had not been involved in the production of the Original Kannon Statue, it was incorrect to introduce the Plaintiff as a "sculptor of the reconstructed Komagome Great Kannon" (as someone who was involved in the production of the Original Kannon Statue). Having invited the Plaintiff as the representative of the N Family, the chief priest was not able to introduce the Plaintiff as a person not related to the Original Kannon Statue. This is why the chief priest was forced to introduce the Plaintiff as a "joint sculptor of the reconstructed Komagome Great Kannon." On the other hand, in said chart, just above "X," there is a statement "Mr. F." Mr. F is a person who was involved in the lacquering and gilding processes for the Original Kannon Statue and was introduced as a "lacquer painter (lacquering and gilding) of the Komagome Great Kannon." If the Plaintiff had been involved in the production of the Original Kannon Statue, the Plaintiff would have been given a seat superior to F and closer to the front because a comparison of the degree of contribution to the completion of the Original Kannon Statue (in terms of time and energy spent for the production) between the person involved in the woodcarving process and the person involved in the lacquering and gilding processes would reveal that the person involved in the woodcarving process is higher in terms of the level of contribution. In reality, however, the seat of the Plaintiff was inferior to the seat of Mr. F.

As described above, the statement "joint sculptor of the reconstructed Komagome Great Kannon" suggests the non-involvement of the Plaintiff in the production of the Original Kannon Statue and does not provide grounds for proving the authorship of the Plaintiff for the Original Kannon Statue.

(D) The Plaintiff does not appear in any of the photographs taken by the former chief priest and the current chief priest, Priest A. In light of the fact that, when the former chief priest and the current chief priest visited the Studio, they never saw the Plaintiff there, it is reasonable to presume that the Plaintiff was not involved in the production of the Original Kannon Statue.

The Plaintiff argues that he was working in the workplace on the second floor (page 20 of the report of the Plaintiff). However, the second floor only has a narrow working space like a space specifically for sleeping that could barely be used as a place to carry out the coloring process for small artworks. It would be impossible to carry each part of the Original Kannon Statue in or out of this space because it is one of the largest statues in the postwar period. The Plaintiff's statement was made solely for the purpose of justifying the fact that the Plaintiff does not appear in any of the photographs.

Since the woodcarving process was completed in around October 1989, the former chief priest requested a professional cameraperson H ("H") to take photographs. It is unnatural that the Plaintiff does not appear in any photographs taken on such a special occasion (Exhibit Otsu No. 28).

(E) At the interview, the Plaintiff stated "In particular, for about three weeks immediately before the delivery, we worked around-the-clock almost every day and devoted all of our energy to work" (page 4 of the Plaintiff's written statements; Exhibit, Ko No. 37). However, the Plaintiff mentioned that he did not receive any remuneration for the production of the Original Kannon Statue. Since it is unreasonable for the Plaintiff to receive no remuneration for such large amount of time and energy he spent on the production, this statement indicates that the Plaintiff was not involved in the production of the Original Kannon Statue.

(F) At the interview, the Plaintiff said that he had stated everything in the Plaintiff's written statements and mentioned almost nothing about the process of producing the Original Kannon Statue. Although the Plaintiff made a few statements, those statements are inconsistent and untrue. For example, he once stated that "(he) did not make (the design of the nimbus) (page 23 of the Plaintiff's report). However, immediately after this statement, when he was requested to give reconfirmation, he said "I designed small things" (page 24 of the Plaintiff's report) and "I drew designs on about A4-size paper" (same page). Also, he made a comment that "the transformed images of Buddha do not have hands" (page 27 of the Plaintiff's report), which is not true.

In light of the aforementioned statements, it is obvious that the Plaintiff was not involved in the production of the Original Kannon Statue.

(G) As described above, the Plaintiff, T, and J are not co-authors of the Original Kannon Statue.

B. Regarding the presumption of authorship under Article 14 of the Act,

(A) The Plaintiff argues that the Plaintiff should be regarded as a co-author of the Original Kannon Statue under Article 14 of the Act on the grounds that, inside the body part of the Original Kannon Statue and its foot tenon, the statements "Director T" and "Producers R, J, X / Pupil Y" are written in sumi (black ink).

However, this Article is about the "presumption of authorship." As described in A. above, it is obvious that the Plaintiff was not involved in the production of the Original Kannon Statue at all according to the evidence such as Defendant Y's statements and photographs (Exhibits Otsu No. 8 to No. 23). These facts prevent such presumption.

Many changes had been made to the important parts of the Plaintiff's statements to the effect that he was involved in the production of the Original Kannon Statue. The

statements themselves contain many unnatural and unreasonable points and cannot be proven to be true based on objective evidence. Therefore, his statement should be considered to be extremely unreliable.

Thus, the aforementioned argument of the Plaintiff is groundless.

(B) The Plaintiff argues that T may be presumed to be an author of the Original Kannon Statue under Article 14 of the Act on the grounds that the statement "Director T" is written inside the body of the Original Kannon Statue and its foot tenon.

However, in the field of art, in consideration of the fact that the name of a famous person can be used as the name of the director just for the sake of formality in order to give the statue a "high level of authority," the person whose name has been stated inside the statue may not be considered as a "A person whose name (omitted) is indicated as the name of the author in the customary manner" and therefore may not be presumed to be an author.

Thus, the aforementioned argument of the Plaintiff is groundless.

(C) The names of T, J, and the Plaintiff stated inside the body of the Original Kannon Statue and its foot tenon cannot be recognized unless the body of the Original Kannon Statue is destroyed or the statue is detached from the pedestal. Since only a few people know that the name of the Plaintiff is stated in said area, it cannot be said that it is indicated "in the customary manner" and cannot be regarded as an indication specified in Article 14 of the Act. Therefore, said Act cannot apply.

C. Summary

Based on the facts described above, the Plaintiff's argument that the Plaintiff is a co-author of the Original Kannon Statue is groundless.

2. Issue 2 (the issue of whether the Plaintiff is entitled to seek an injunction, etc. based on infringement of the right to maintain integrity)

(1) Argument of the Plaintiff

A. The Plaintiff is a co-author of the Original Kannon Statue and has a moral right of author (the right to maintain integrity) for the Original Kannon Statue.

B. (A) Around 2003, the Plaintiff received a request from the current chief priest of the Kogenji Temple, Priest A, (the representative of Defendant Kogenji Temple) for the Plaintiff's consent to the replacement of the head part of the Original Kannon Statue on account of its harsh facial expression. However, the Plaintiff immediately refused this request in consideration of the fact that, as is common knowledge among those involved in Buddhism or Buddhist statue sculpturing, after the ceremony to consecrate a newly-made Buddhist statue, as in the case of the Original Kannon Statue, the statue is regarded not as a mere sculpture but as an object of worship, as Buddha, and therefore

even the producer cannot alter the Buddhist statue except for the minimal repairs necessary for preservation, and also the fact that the purpose of the aforementioned request of Priest A was to make the replacement of the head part of the Original Kannon Statue an officially approved matter so that the replacement could be carried out without the involvement of the Plaintiff.

Although the defendants were aware that the Plaintiff had a moral right of author (the right to maintain integrity) and had no intention of agreeing to the replacement of the head part of the Original Kannon Statue, Defendant Kogenji Temple placed an order with Defendant Y for the replacement of the head part of the Original Kannon Statue. In response, Defendant Y carried out the replacement. In this way, Defendant Kogenji Temple and Defendant Y jointly infringed the Plaintiff's right to maintain integrity for the Original Kannon Statue.

Defendant Kogenji Temple took the initiative in replacing the head part of the Original Kannon Statue as described above and enshrined the Original Kannon Statue with the replaced head part (in other words, the Kannon Statue) in the Kannon Hall and continued offering it for public viewing with a complete disregard for the repeated requests from the Plaintiff for the restoration of the head part to its original state. The series of acts of Defendant Kogenji Temple as a whole should be regarded as intentional, continuous infringement of the Plaintiff's right to maintain integrity for the Original Kannon Statue.

(B) Article 20, paragraph (1) of the Act considers that a work embodies the personality of the author and specifies that the author "shall have the right to maintain the integrity of his work" under the moral rights of author in order to maintain the completeness or integrity of the expressions of the author's thoughts or sentiments embodied in his/her work. Therefore, a decision as to whether a certain act constitutes infringement of the right to maintain integrity should be made from a substantive and normative viewpoint in consideration of the aforementioned original purpose of said provision. At least, the right to maintain integrity should not be narrowly interpreted as merely the right to prohibit modifications based on a strictly literal interpretation of the phrase "no (omitted) modification shall be made" contained in said provision.

In short, the series of acts of Defendant Kogenji Temple mentioned in (A) above consist of an act of completely replacing the head part of the Original Kannon Statue, which may be considered to be the most important part in terms of the expression of a Buddhist statue, and an act of offering, up to this day, the Kannon Statue, with the replaced head part, for viewing by the public, consisting of a large number of unspecified people, without notifying the Plaintiff and the public of the replacement.

Defendant Kogenji Temple carried out these acts, showing consistent bad faith from beginning to end, despite the explicit intention indicated by the Plaintiff in advance. If such willful acts may not be considered as infringement of the right to maintain integrity, the right to maintain integrity would be a pie in the sky for the author.

C. Defendant Kogenji Temple argued that the defendants' act of replacing the head part of the Original Kannon Statue does not constitute "modification against the will of R, etc." and should be regarded as "modifications that are considered unavoidable" (Article 20, paragraph (2), item (iv) of the Act) and therefore that said act does not constitute infringement of the right to maintain integrity.

However, this argument of Defendant Kogenji Temple is groundless for the following reasons.

(A) The act should be regarded to be against the will of the authors such as R

The head part, including the eleven transformed images of Buddha (more accurately, transformed images of Buddha and changing faces), is an important part of the Original Kannon Statue, which is a wood-carved eleven-headed Kannon Bosatsu statue, in terms of the expression of the thoughts and sentiments of the authors including R. Although there was no need for repairs, the head part of the statue was replaced. Such an act should be considered to be against the will of R, etc. unless there are special circumstances such as that R's consent for such replacement had been obtained before his death.

(B) The act should not be regarded to be a "modification that is considered unavoidable"

The case where an act may be considered to be a "modification that is considered unavoidable" specified in said item should be limited to the case where the head part of the statue suffers damage that is substantial and serious to such an extent that it cannot be fixed through partial repairs but must be fixed through the complete replacement of the head part, or the case where the head part of the Original Kannon Statue has a defect that is so serious that the statue with said head part would not function as a Buddhist statue unless it is modified.

Since this case falls under neither of the aforementioned cases, the replacement of the head part may not be considered as a "modification that is considered unavoidable."

Due to the short depth of the Kannon Hall, those praying inside the Kannon Hall had to look upward to the Original Kannon Statue and were unable to make direct eye contact with the Original Kannon Statue. This is because the Original Kannon Statue was produced with the presumption that worshipers would also offer prayers from outside through the window of Kannon Hall, which is an arrangement requested by the former chief priest. It is not the case that, after the completion of the Original Kannon

Statue, R managed to carve the eyes of the statue in such a way that the Original Kannon Statue seemed to look downward.

In around 1994, the Plaintiff repaired the Original Kannon Statue. However, this repair was conducted in response to the request from Defendant Kogenji Temple for the repainting of the chalk powder, which had peeled away from the eyes of the Original Kannon Statue. This repair did not involve any modification of the woodcarving of the facial expression or the eyes of the Original Kannon Statue.

Moreover, the defendants' act of replacing the head part of the Original Kannon Statue may not be regarded as a "modification that is considered unavoidable" in consideration of various factors such as the following facts: [i] it was common knowledge that the Original Kannon Statue was produced by T, R, J, and the Plaintiff; [ii] a major modification was made to the Original Kannon Statue, namely the replacement of its entire head part, which is an important part of the statue; [iii] the modification was made despite the absence of necessity for repair in such a way that disregards the nature of the appearance of the Original Kannon Statue (appearance that gives the viewers an impression of three-dimensional mass and great strength like the Kannon statues in the Tempyo era (the late Nara era) or also gives an impression of not only mercy but also dignity and strength; hereinafter the same) as planned and designed based on the style and characteristics of the Hasedera-style eleven-headed Kannon Bosatsu statue (being regal, dignified, etc.); [iv] the modification was made despite the Plaintiff's explicit disapproval given in advance; and [v] the defendants' act of replacing the head part of the Original Kannon Statue was conducted without any consensus among the believers and neighborhood residents.

D. Therefore, in order to stop the Defendant Kogenji Temple's continuous infringement of the right to maintain integrity as specified in B.(A) above, the Plaintiff is entitled to request Defendant Kogenji Temple, under Article 112, paragraph (1) of the Act, to suspend the offering of the Kannon Statue for public inspection until its head part is restored to its original state as of the time when the Original Kannon Statue was produced, and, under paragraph (2) of said Article, to seek the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced, as a measure necessary to stop or prevent said infringement.

(2) Counterargument of Defendant Kogenji Temple

A. Since the Plaintiff is not a co-author of the Original Kannon Statue, the Plaintiff does not have the right to maintain integrity for the Original Kannon Statue.

B. The replacement of the head part of the Original Kannon Statue does not constitute any "distortion, mutilation or other modification thereof (omitted) made against his

intent (the intent of R as an author)" as specified in Article 20, paragraph (1) of the Act, but constitutes "modifications that are considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation" as specified in Article 20, paragraph (2), item (iv) of the Act for the following reasons.

(A) The reason why the replacement of the head part does not constitute modification made against the will of R, who is an author

a. The head part of the Original Kannon Statue is important for expressing the thoughts and sentiments of R. The statement made by R about the head part that "if you do not like it, I will make it over" reflects the true intent of R.

If R had been satisfied with the production of the head part, R would not have made such a statement because he would not have even imagined "re-creating" the head part even if it were still in the middle of production. Therefore, the aforementioned statement made by R indicates his dissatisfaction with the finished head part.

Furthermore, R told Defendant Y, in whom R had great confidence, that R was dissatisfied with the final appearance of the Original Kannon Statue and was considering re-creating it.

It is obvious that R was not satisfied with the final appearance of the Original Kannon Statue.

b. In response to a request from Defendant Kogenji Temple, R had the Plaintiff repair the peeled-away chalk powder (eyes) of the changing faces of the Original Kannon Statue and also repair the balance of the eyes of the Original Kannon Statue, which was the primary cause of the odd look on the face of the statue that was heavily criticized. If R had been satisfied with how the head part of the Original Kannon Statue had appeared, R would not have repaired the head part of the Original Kannon Statue, even if the repair was requested by Defendant Kogenji Temple. The very fact that R had the Plaintiff repair the balance of the eyes of the Original Kannon Statue indicates R's dissatisfaction with the final appearance of the head part of the Original Kannon Statue.

R did not re-create the head part of the Original Kannon Statue because R suffered a stroke and a significant decline in physical strength as a result, which made it impossible to re-create it by himself.

c. For one week from August 23, 1988, R presented the head part in the 35th Buddhism Art Sculpture Exhibition held in the Nihonbashi Mitsukoshi Department Store. In a ceremony to consecrate the Original Kannon Statue by inserting eyes held in May 18, 1993, R gave a speech, saying that "(omitted) I did my best. The statue has come out all right." Based on these facts, it is unreasonable to presume that R had no intention of replacing the head part.

In other words, R happened to present the statue in the Buddhism Art Sculpture Exhibition due to the facts that R, who was a member of the Buddhism Art Association, was required to present a work in the Buddhism Art Sculpture Exhibition, that R was unable to predict how the face of the Original Kannon Statue would look when completed because the head part was still at the end of the rough carving process as of August 1988, and that R was unable to detect a serious defect in the head part of the Original Kannon Statue.

Regarding the speech given by R at the ceremony to consecrate the newly-made Buddhist statue, R used the expression "The statue has come out all right" simply because it was impossible for R, who is the producer of the Original Kannon Statue, to say "I'm dissatisfied with how the Original Kannon Statue has come out" in front of Defendant Kogenji Temple, which placed the order for the production of the statue, and all other people concerned on a ceremonial occasion to celebrate the completion of the Original Kannon Statue. If R had been satisfied with the appearance of the Original Kannon Statue, he would have directly expressed his satisfaction with the completed Original Kannon Statue in his ceremonial speech by saying, for example, "The statue has turned out to be very satisfactory."

In consideration of the fact that R was in a ceremony where he was unable to express his true feelings, it can be said that the expression "The statue has come out all right" clearly shows his dissatisfaction with the finished Original Kannon Statue.

(B) The replacement may be regarded as a "modification that is considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation"

a. The Original Kannon Statue is about six meters high from the pedestal up to the nimbus. Since the Kannon Hall has a relatively short depth, worshipers who offered prayers had to look up to the Kannon Statue at an acute angle. Worshipers who looked up in this way were unable to make direct eye contact with the Original Kannon Statue. To solve this problem, R made a quick repair by arbitrarily carving the surface of the eyes so that the Original Kannon Statue seemed to look downward. As a result, the Original Kannon Statue ended up not having half-opened eyes gazing downward with an expression of tender mercy, but having a surprised or angry look on its face with the eyes wide open when worshipers looked up at the statue.

b. On May 18, 1993, the Kogenji Temple held a ceremony to consecrate the Original Kannon Statue placed in the Kannon Hall.

After said ceremony, a Kannon statue is no longer a mere sculpture but becomes an object of worship. In other words, worshipers deepen their devotion by praying to a

Kannon statue that has an expression of tender mercy. Therefore, a Kannon statue after said ceremony should be regarded as an object of worship.

In this way, the facial expression of a Buddhist statue has an extremely important meaning as an object that embodies the devotion of worshipers and the principle of religious freedom guaranteed by the Constitution.

The Original Kannon Statue had been offered for public viewing since the date of the ceremony to consecrate a newly-made Buddhist statue, but, during this time, Defendant Kogenji Temple received many complaints from believers and worshipers, such as that "I feel uneasy when I pray to the Komagome Great Kannon," and requests represented by that from the representative of supporters that "I'm afraid that worshipers would hesitate to visit Kogenji Temple if the Kannon Statue looks this way. We would appreciate if you could take any measures to solve this problem."

c. Defendant Kogenji Temple could no longer disregard the complaints from believers and worshipers about the facial expression of the Original Kannon Statue. It was inevitable for Defendant Kogenji Temple to request R to repair the eyes of the Original Kannon Statue in around 1994.

However, since R was unable to repair the Original Kannon Statue by himself due to old age and the aftereffects of the cerebral infarction, he sent the Plaintiff to repair the eyes of the Original Kannon Statue.

The Plaintiff carved the eyes of the Original Kannon Statue once again, but Defendant Kogenji Temple checked the Original Kannon Statue and found that its eyes were still looking in different directions. Defendant Kogenji Temple notified the Plaintiff to that effect and requested the Plaintiff to conduct a repair once again.

In response to the request from Defendant Kogenji Temple, the Plaintiff repaired the statue once again, but was unable to correct the balance of the eyes and failed to modify the facial expression of the Original Kannon Statue.

Even after the repair was conducted by the Plaintiff, Defendant Kogenji Temple continued receiving many complaints from believers and worshipers many to the effect that "I feel uneasy when I pray to the Komagome Great Kannon" and many requests, such as that "This is an unfortunate situation for the Kannon statue. We would appreciate if you could take any measures."

d. Defendant Kogenji Temple respected the religious faith of believers and worshipers and concluded that it would be inevitable to replace the head part of the Original Kannon Statue. In around 2003, Defendant Kogenji Temple explained the situation to the Plaintiff and requested his consent for the replacement of the head part. However, the Plaintiff did not pay much attention to the explanation of Defendant Kogenji Temple

and refused the aforementioned request.

e. Defendant Kogenji Temple concluded from the Plaintiff's attitude that it would be impossible to obtain his consent to the replacement of the head part. However, Defendant Kogenji Temple was unable to disregard the opinions of believers and worshipers because the Original Kannon Statue was an object of worship. Defendant Kogenji Temple requested Defendant Y to repair the expression in the eyes and the balance between the two eyes of the Original Kannon Statue because Defendant Y was one of the producers of the Original Kannon Statue and had a good understanding of the thoughts of R through many years of collaboration with R. Defendant Y accepted the request, thinking that the acceptance of the request from the current chief priest would enable him to properly correct the defect of the head part of the Original Kannon Statue and to realize the will of R, who wanted it redone.

f. Defendant Y considered sculpturing the head part of the Original Kannon Statue once again, but found that he would not be able to correct the balance between the two eyes and modify the expression in the eyes through re-sculpturing. Defendant Y decided to re-create the head part. In order to modify the expression and balance of the eyes of the Original Kannon Statue, it was necessary to cut off the front surface of the head part and carve the face anew. However, Defendant Y was not able to carve the shape of the face in an appropriate way, and it was inevitable that he had to re-create the head part.

g. The re-created head part, which no longer had wide-open eyes, has received positive comments and praise from many of the believers. As described above, the defendants replaced the head part of the Original Kannon Statue simply because they respected the religious faith of believers and neighborhood residents.

Moreover, the defendants modified the statue to the minimum extent necessary by replacing only the head part.

h. Therefore, the defendants' act of replacing the head part of the Original Kannon Statue may be considered to be a "modification that is considered unavoidable" in light of the purpose and style of the statue and the unique feature that the work disputed in this case is an object of worship.

C. On these grounds, all of the claims of the Plaintiff made on the grounds of infringement of the Plaintiff's right to maintain integrity for the Original Kannon Statue are groundless.

3. Issue 3 (whether the Plaintiff is entitled to seek, among other things, the restoration of the statue to its original state under Article 115 of the Act)

(1) Argument of the Plaintiff

A. Article 115 of the Act specifies that "The author (omitted) may demand against a

person who, intentionally or negligently, infringes on his moral rights, (omitted) that such person take appropriate measures to ensure identification of the author (omitted) as the author (omitted), to make corrections (omitted), or to restore the honor and reputation of the author (omitted)."

As the measures to restore the honor and reputation of the author specified in said Article, the following three measures are available: [i] "appropriate measures to secure authorship" primarily against infringement of the right to determine the indication of the author's name, [ii] "appropriate measures to make a correction" primarily against infringement of the right to maintain integrity, and [iii] "any other appropriate measures to restore the honor and reputation of the author" against an act prejudicial to the honor or reputation of the author as specified in Article 113, paragraph (6) of the Act. It should be interpreted that the damage of honor or reputation or social respect is required only in the case where a claim is made to seek [iii] above.

Therefore, a claim for "appropriate measures to make a correction" should be allowed to be made even if the honor and reputation of the author has not been damaged, if the following conditions are met: [i] the right to maintain integrity has been infringed, [ii] measures to make a correction have become an appropriate remedy because the modified work has been distributed in society, and [iii] the infringement of the right has been committed intentionally or negligently. In that case, a claim for measures to make a correction should be permitted in accordance with the level of distribution of the modified work regardless of whether the social evaluation of the author has declined or not.

In consideration of the various facts, [i] that the defendants have intentionally infringed the Plaintiff's right to maintain integrity for the Original Kannon Statue, [ii] that it is common knowledge that the Original Kannon Statue was produced by T, R, J, and the Plaintiff, [iii] that the modification made by the defendants may be considered to be a major modification of an important part of the Original Kannon Statue, namely, the replacement of the entire head part of the statue, [iv] that the modification was made despite the absence of necessity for repairs and made without paying attention to the fact that the Original Kannon Statue was a Hasedera-style eleven-headed Kannon Bosatsu statue, and [ivl] that, despite the Plaintiff's repeated warnings against the infringement, the defendants did not respond with sincerity and Defendant Kogenji Temple has continued offering the Kannon Statue after modification for public viewing up to this day, it may be said that the Plaintiff is entitled to demand against Defendant Kogenji Temple the restoration of the head part of the Kannon Statue to its original state as of the time when the Kannon Original Statue was produced and the suspension of the

act of offering the Kannon Statue for public viewing during the period until the aforementioned restoration is completed, as "appropriate measures (omitted) to make corrections" specified in Article 115 of the Act.

B. Among the supporters, believers, neighborhood residents, etc. of the Kogenji Temple, it was widely known that the Original Kannon Statue was jointly produced by T, R, J, and the Plaintiff as shown by [i] the news reports by newspapers, etc. concerning the reconstruction of the Original Kannon Statue, [ii] the ceremony to consecrate the newly-made Buddhist statue held at Defendant Kogenji Temple in the presence of the Plaintiff, etc., which was reported by newspapers, etc., and [iii] the seating chart (Exhibit Ko No. 44) prepared by Priest A for the service held by Defendant Kogenji Temple to commemorate the sixth anniversary of the death of the former chief priest, in which the Plaintiff was introduced as a "joint sculptor of the reconstructed Komagome Great Kannon" to many other attendants.

The evaluation made by these people about the Plaintiff's honor and reputation was greatly damaged by Defendant Kogenji Temple's act of having Defendant Y replace the head part of the Original Kannon Statue and its act of receiving recognition from its supporters, believers, neighborhood residents, etc.

Therefore, the Plaintiff is entitled to demand from Defendant Kogenji Temple, as "measures (omitted) to restore the honor and reputation" as specified in Article 115 of the Act, the restoration of the head part to its original state as of the time when the Original Kannon Statue was produced and the suspension of the offering of the Kannon Statue for public viewing during the time until the aforementioned restoration is completed.

(2) Counterargument of Defendant Kogenji Temple

The Plaintiff does not have any moral rights of author for the Original Kannon Statue because he is not a co-author of the Original Kannon Statue.

Thus, all of the Plaintiff's claims based on the premise that the Plaintiff has the moral rights of author for the Original Kannon Statue are groundless.

4. Issue 4 (whether the Plaintiff is entitled to seek measures based on the act that may be deemed to constitute infringement of the Plaintiff's moral rights of author under Article 116, paragraph (6) of the Act)

(1) Argument of the Plaintiff

A. If the series of acts of modifying and exploiting a work is considered or suspected to be out of line with the author's intent of creation due to the manner of modification or exploitation, such act may be considered to be an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113,

paragraph (6) of the Act and should be interpreted as an act of infringing the moral rights of author.

After replacing the head part of the Original Kannon Statue, Defendant Kogenji Temple enshrined the Original Kannon Statue with the replacement head (in short, the Kannon Statue) in the Kannon Hall and has continued offering it for public viewing. Such series of acts of Defendant Kogenji Temple should be considered to be an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" because such acts are not only out of line with the Plaintiff's intent of creation but also have made the general public question the author's intent of creation for the Original Kannon Statue and therefore did, or at least could, damage the Plaintiff's honor or reputation in light of the facts that [i] such acts are against the Plaintiff's explicit disapproval given to Defendant Kogenji Temple and also against the common belief of the sculptors of Buddhist statues from the perspective of people connected with Buddhism and Buddhist statue sculptors and [ii] the act of greatly modifying the Original Kannon Statue by replacing an important part thereof, namely, the entire head part, was conducted despite the absence of necessity for repairs in disregard of the nature of the design of the Original Kannon Statue, which was created based on the style and characteristics of the Hasedera-style eleven-headed Kannon Bosatsu statue.

Furthermore, in light of the fact that Defendant Kogenji Temple's act of replacing the head part and offering the Kannon Statue with the replacement head for public viewing could cause the supporters, neighborhood residents, worshipers, and the general public to mistakenly recognize that the producer of the Original Kannon Statue had created a Kannon statue so poorly that its head part needed a replacement, the act of offering the Kannon Statue for public viewing may be regarded as an act of "exploiting" the Original Kannon Statue "in a manner prejudicial to the honor or reputation of the author."

B. Therefore, in order to stop Defendant Kogenji Temple's act that may be deemed to constitute infringement of the Plaintiff's moral rights of author, the Plaintiff may demand against Defendant Kogenji Temple, under Article 112, paragraph (1) of the Act, the suspension of its act of offering the Kannon Statue for public viewing during the period until the head part is restored to its original state as of the time when the Original Kannon Statue was produced, and, under Article 112, paragraph (2) of the Act, the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced as a measure necessary to stop or prevent the aforementioned infringement.

(2) Counterargument of Defendant Kogenji Temple

The Plaintiff, who is not a co-author of the Original Kannon Statue, does not have the moral rights of author for the Original Kannon Statue.

Therefore, all of the Plaintiff's claims made on the premise that the Plaintiff has the moral rights of author for the Original Kannon Statue are groundless.

5. Issue 5 (whether the Plaintiff is entitled to seek an injunction, etc. against the infringement of the right of exhibition for a derivative work as a copyright for the original work)

(1) Argument of the Plaintiff

A. The Plaintiff is a co-author of the Original Kannon Statue. Since the death of R on September 28, 1999, the Plaintiff and another co-author J have jointly owned the copyright for the Original Kannon Statue.

Since the Kannon Statue, which was created by the defendants by replacing the head part of the Original Kannon Statue, is the original work of a derivative work of the Original Kannon Statue, the Plaintiff exclusively owns the right of exhibition for the Kannon Statue as an author of the original work of the derivative work under Articles 28 and 25 of the Act.

Defendant Kogenji Temple enshrined the Kannon Statue in the Kannon Hall and has continued offering the statue for viewing by worshipers in complete disregard of the Plaintiff's repeated requests for the restoration of the head part to its original state. Therefore, Defendant Kogenji Temple may be considered to have infringed the aforementioned right of exhibition of the Plaintiff.

B. Thus, in order to stop Defendant Kogenji Temple's act of infringing the aforementioned right of exhibition of the Plaintiff, the Plaintiff may demand against Defendant Kogenji Temple, under Article 112, paragraph (1) of the Act, the suspension of its act of offering the Kannon Statue for public viewing during the period until the head part is restored to its original state as of the time when the Original Kannon Statue was produced, and, under Article 112, paragraph (2) of the Act, the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced as a measure necessary to stop or prevent the aforementioned infringement.

(2) Counterargument of Defendant Kogenji Temple

The Plaintiff, who is not a co-author of the Original Kannon Statue, does not have a copyright (the right of exhibition) for the Original Kannon Statue.

Therefore, all of the Plaintiff's claims made on the premise that the Plaintiff has the right of exhibition for the Kannon Statue as the author of the original work (the Original Kannon Statue) of a derivative work are groundless.

6. Issue 6 (the amount of damage suffered by the Plaintiff)

(1) Argument of the Plaintiff

(A) The total amount of damage that the Plaintiff suffered due to the defendants' act of tort, i.e., the act of infringing the right to maintain integrity (as described in 2(1) above) or the act that may be deemed to constitute infringement of the moral rights of author (as described in 4.(1) above) should be at least six million yen in total as follows.

a. Solatium: Five million yen

The amount of solatium should be at least five million yen to compensate the emotional distress suffered by the Plaintiff as a result of the defendants' act of infringing the right to maintain integrity or the defendants' act that may be deemed to constitute infringement of the moral rights of author in consideration of various circumstances including the background of the production of the Original Kannon Statue, the high value of the Original Kannon Statue as a Buddhist statue, the major modification intentionally made by the defendants to an important part of the Original Kannon Statue, the Defendant Kogenji Temple's continuous offering of the Kannon Statue for public viewing after the modification, and the defendants' insincere handling of the Plaintiff's warnings against infringement.

b. Attorneys' fee: One million yen

The amount of the Plaintiff's damage equivalent to the attorneys' fee that was proximately caused by the defendants' act of infringing the right to maintain integrity or the defendants' act that may be deemed to constitute infringement of the moral rights of author should be at least one million yen.

(B) Therefore, the Plaintiff is entitled to demand that the defendants shall jointly pay six million yen as the damage for the defendants' act of tort, i.e., the act of infringing the right to maintain integrity or the act that may be deemed to constitute infringement of the moral rights of author and the delay damages accrued thereon at a rate of 5% per annum as specified in the Civil Code for the period from September 22, 2007 in the case of Defendant Kogenji Temple, from September 23, 2007 (the date following the date of service of each complaint, which was after the act of tort related to the infringement of the right to maintain integrity) in the case of Defendant Y, or from August 29, 2008 (the date following the date of service of a written petition for amendment of claims dated August 27, 2008 concerning the act that may be deemed to constitute infringement of the moral rights of author) in the case of the defendants until the date of full payment.

B. (A) The amount of solatium for the emotional distress that the Plaintiff will suffer in the future due to Defendant Kogenji Temple's act of infringing the right to maintain integrity or Defendant Kogenji Temple's act that may be deemed to constitute

infringement of the moral rights of author should be at least 100,000 yen per month during the period until Defendant Kogenji Temple restores the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced.

(B) Therefore, the Plaintiff is entitled to demand from Defendant Kogenji Temple the payment of 100,000 yen per month by the end of each month during the period from December 22, 2009 (the date following the date of the conclusion of oral argument) until Defendant Kogenji Temple restores the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced as the damage for an act of tort, i.e., the act of infringing the right to maintain integrity or the act that may be deemed to constitute infringement of the moral rights of author.

(2) Counterargument of the defendants

The argument of the Plaintiff is disputable.

7. Issue 7 (whether the Plaintiff is entitled to seek the restoration of the head part to its original state, etc. for the purpose of protecting the moral rights of T and R)

(1) Argument of the Plaintiff

A (A) T and R are two of the co-authors of the Original Kannon Statue, but both passed away before the defendants' act of replacing the head part of the Original Kannon Statue. Since the Plaintiff is a son of T and a younger brother of R, the Plaintiff is the "primary survivor" of T and R (Article 116, paragraph (2) of the Act).

The defendants' act of replacing the head part of the Original Kannon Statue and the Defendant Kogenji Temple's act of offering the Kannon Statue for public viewing after the replacement would be against the will of T and R if they were still alive and would constitute an act of infringing the right to maintain integrity (Article 20 of the Act) and also constitute an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" (Article 113, paragraph (6) of the Act).

Therefore, the Defendant Kogenji Temple's act of replacing the head part of the Original Kannon Statue and offering the Kannon Statue for public viewing after the replacement would constitute infringement of the moral rights of author of T and R if they were still alive (the main clause of Article 60 of the Act).

(B) On the other hand, as described below, Defendant Kogenji Temple argues that its act was not subject to prohibition under the main clause of Article 60 of the Act because it is considered as the "case where it is found to not be against the will of" R, etc. (proviso of Article 60 of the Act). However, this argument is groundless.

Defendant Kogenji Temple argues that R was considering re-creating the head part of the Original Kannon Statue. However, this is not true. This is clearly shown by the

fact (Exhibits Ko No. 4 and No. 5) that R himself presented to the Buddhism Art Sculpture Exhibition the original head part of the Original Kannon Statue as of the time when it was produced.

In this case, the defendants intentionally and jointly replaced the head part of the Original Kannon Statue and Defendant Kogenji Temple has continuously offered the Kannon Statue for public viewing after the replacement. Therefore, even if R were considering re-creating the head part of the Original Kannon Statue, it is clear that the social honor and reputation of R were greatly damaged by the defendants' act of replacing the head part of the Original Kannon Statue because R was publicly announced as a producer of the Original Kannon Statue.

Furthermore, the act of continuously offering the Kannon Statue for viewing after the replacement of its head part also continues to greatly damage the social honor or reputation of R.

Therefore, the defendants' act may not be regarded as "not being against the will of the author (R)" as specified in the proviso of Article 60 of the Act.

B. As specified in A.(B) above, Defendant Kogenji Temple's act of replacing the head part of the Original Kannon Statue and offering the Kannon Statue for public viewing after the replacement has caused damage to the honor or reputation of T and R.

C. Thus, under Article 20, Article 113, paragraph (6), Article 116, paragraph (1), Article 112 (as mentioned in 2.(1) above), and Article 115 (as mentioned in 3.(1) above) of the Act and also under Article 112, paragraphs (1) and (2) of the Act, the Plaintiff is, as a surviving family member of T and R, entitled to demand from Defendant Kogenji Temple the suspension of the act of offering the Kannon Statue for public viewing during the period until the head part of the Kannon Statue is restored to its original state as of the time when the Original Kannon Statue was produced and the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced.

(2) Counterargument of Defendant Kogenji Temple

A. Since T is not a co-author of the Original Kannon Statue and does not have the moral rights of author for the Original Kannon Statue, the defendants' act of replacing the head part of the Original Kannon Statue and offering the Kannon Statue for public viewing after the replacement would not constitute infringement of T's moral rights of author even if T were alive.

B. R is an author of the Original Kannon Statue.

(A) However, in view of the following facts, the defendants' act of replacing the head part of the Original Kannon Statue and offering the Kannon Statue for public viewing

after the replacement may be considered to be "not against the will of the author" (proviso of Article 60 of the Act). Therefore, said act is not subject to prohibition under the main clause of said Article.

a. In around June 1987, when the rough carving of the head part of the Original Kannon Statue was completed, R said to the former chief priest "if you do not like it, I will make it over." This shows that R was dissatisfied with the final appearance of the head part of the Kannon statue and had considered remaking it.

In the ceremony to consecrate the Original Kannon Statue held on May 18, 1993, the defect of the head part of the Original Kannon Statue was clearly revealed. After the lacquering and gilding processes, the Original Kannon Statue had a surprised expression in its glaring eyes. The statue had neither half-opened eyes gazing downward to show the mercy of Buddha nor an expression of tender mercy as the Goddess of Kannon.

For this reason, R and the former chief priest were disappointed because they felt "it is disappointing to see such a face after waiting for so long to hold a ceremony to consecrate the newly-made Buddhist statue."

As described above, R was dissatisfied with the final appearance of the head part in the course of the production of the Original Kannon Statue and had considered remaking it. However, after R was hospitalized in May 1989, he suffered a significant decline in physical strength. It was practically impossible for him to re-create the head part.

R was unable to recover his mental and physical strength and passed away on September 28, 1999.

b. As described above, R was unable to re-create the head part of the Original Kannon Statue only because he did not have sufficient mental and physical strength. R was dissatisfied with the head part of the Original Kannon Statue and considering remaking it.

Defendant Y had long been engaged in the production of the Original Kannon Statue jointly with R. Defendant Y and R had great respect for each other. Defendant Y understood both R's feeling when R was seriously considering re-creating the head part of the Original Kannon Statue and the actual situation of Defendant Kogenji Temple, and he re-created the head part of the Original Kannon Statue upon the request of Defendant Kogenji Temple. Therefore, this may be considered to be a case "not against the will" of R (proviso of Article 60 of the Act).

c. The allegation that the honor and reputation of R has been damaged is groundless.

(B) The defendants' act of re-creating the head part of the Original Kannon Statue may not be considered as "modification thereof (omitted) made against his intent" as specified in Article 20, paragraph (1) of the Act, but may be regarded as "modifications

that are considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation" as specified in Article 20, paragraph (2), item (iv) of the Act.

(C) The defendants' act of re-creating the head part of the Original Kannon Statue may not be regarded as an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113, paragraph (6) of the Act.

C. Therefore, all of the claims of the Plaintiff made based on Article 116, paragraph (1) of the Act are groundless.

8. Issue 8 (whether the Plaintiff is entitled to demand an apology advertisement and correction advertisement)

(1) Argument of the Plaintiff

A. As described in 3.(1), 4.(1), and 7.(1) above, the defendants' act of replacing the head part of the Original Kannon Statue constitutes an act of infringing the right to maintain integrity specified in Article 20, paragraph (1) of the Act and an act that may be deemed to constitute infringement of the moral rights of author specified in Article 113, paragraph (6) of the Act, and these acts damaged the honor or reputation of the Plaintiff, T, and R.

In consideration of various facts, [i] that the honor or reputation of the Plaintiff, T, and R may not be restored simply by monetary compensation, [ii] that the modification made by the defendants was a major modification, i.e., the replacement of an important part, namely the entire head part, of the Original Kannon Statue, [iii] that the act of modification was conducted without the necessity for repairs in disregard of the fact that the Original Kannon Statue was a Hasedera-style eleven-headed Kannon Bosatsu statue, and [iv] that, despite the repeated warnings from the Plaintiff against the infringement, the defendants continued taking an insincere attitude and Defendant Kogenji Temple has been continually offering the Kannon Statue for public viewing after the replacement up to today, it would be a minimum and reasonable measure to make the defendants publish an apology advertisement for the Plaintiff as shown in Apology Advertisement List 1 attached to this judgment and an apology advertisement for T and R as shown in Apology Advertisement List 2 as a measure to restore the honor or reputation of the Plaintiff or the honor or reputation of T and R respectively.

B. Thus, as a remedy for infringement of the rights of the Plaintiff, T, and R as specified in Article 115 of the Act, the Plaintiff demands against the defendants the publication of apology advertisements (including correction advertisements) shown in Apology Advertisement Lists 1 and 2 attached to this judgment as a measure to restore the honor or reputation of the Plaintiff, T, and R under Article 116, paragraph (1) of the Act as the

exercise of the Plaintiff's own rights or as a surviving family member of T and R. Meanwhile, the Plaintiff is entitled to demand the publication of a correction advertisement regardless of whether R suffered a decline in the level of his honor or reputation or lost an opportunity to enhance it and whether it is necessary to recover it.

(2) Counterargument of the defendants

The Plaintiff and T were not authors of the Original Kannon Statue.

The re-creation of the head part of the Original Kannon Statue was in line with the will of R. Although R was dissatisfied with how the final appearance of the head part of the Original Kannon Statue, R did not have sufficient mental and physical strength to remake it. Therefore, the re-creation of the head part of the Original Kannon Statue falls under the case "where it is found to not be against the will of the author in light of the nature and extent of the act as well as changes in social circumstances and other conditions" as specified in the proviso of Article 60 of the Act and does not infringe the R's moral rights of author.

Moreover, the re-creation of the head part of the Original Kannon Statue may not be regarded as "modification thereof (omitted) made against his intent" as specified in Article 20, paragraph (1) of the Act, but should be regarded as "modifications that are considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation" as specified in Article 20, paragraph (2), item (iv) of the Act and may not be regarded as an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113, paragraph (6) of the Act, nor may be regarded as an "act which would constitute an act of infringement upon the moral rights of author" as specified in the main clause of Article 60 of the Act.

Therefore, all of the claims of the Plaintiff for apology advertisements (including correction advertisements) shown in Apology Advertisement Lists 1 and 2 attached to this judgment as an appropriate measure to restore the honor or reputation of R under Article 116, paragraph (1) of the Act are unacceptable.

[Arguments concerning the issues in this instance]

The arguments presented by the parties concerning the issues in this instance are as follows.

9. Issue 9 (whether the Plaintiff is entitled to seek the restoration of the head part to its original state or the suspension of the offering of the statue for public viewing based on the infringement of the right of exhibition)

(1) Argument of the Plaintiff

A. Regarding the Original Kannon Statue, which is a type of artistic work called "sculpture" (Article 10, paragraph (1), item (iv) of the Act), there is a consensus

between the parties that R is a (co-)author. T is a co-author as well.

T and R passed away on July 29, 1988 and September 28, 1999 respectively. As a result, the right of exhibition that T and R had for the Original Kannon Statue was inherited by the Plaintiff and J.

For the Kannon Statue, which is a derivative work of the Original Kannon Statue, the Plaintiff and J jointly own the exclusive right to exhibit the original work to the public (Articles 28 and 25 of the Act).

B. Thus, under Article 112, paragraph (1) of the Act, the Plaintiff has the right to demand against Defendant Kogenji Temple the suspension of the offering of the Kannon Statue for public viewing during the period until the head part of the Kannon Statue is restored to its original state as of the time when the Original Kannon Statue was produced in order to stop the act of infringing the right of exhibition (Articles 28 and 25 of the Act) that the Plaintiff inherited from T and R.

Moreover, as a measure necessary to stop or prevent the aforementioned infringement of the right of exhibition, under Article 112, paragraph (2) of the Act, the Plaintiff has the right to demand against Defendant Kogenji Temple the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced.

(2) Counterargument of the defendants

A. When T was still alive, T did not own the right of exhibition because T was not an author of the Original Kannon Statue. Therefore, the Plaintiff cannot inherit T's inherent right of exhibition.

B. The Defendant Y's act of re-creating the head part of the Original Kannon Statue was not against the will of R, but in line with the will of R. In the cases like this one where the re-creation of the head part by Defendant Y, who is one of the co-authors, is not against the will of another co-author (R), if a person who has merely inherited a copyright from R, who is one of the co-authors, demands the suspension of the offering of the Kannon Statue for public viewing or the restoration of the head part to its original state only because the person has inherited the right of exhibition, it would constitute an abuse of rights and should be found unacceptable.

Defendant Kogenji Temple, which has an ownership right to the Kannon Statue, is entitled to exhibit the Kannon Statue at its own discretion under Article 45 of the Act.

10. Issue 10 (whether the Plaintiff is entitled to seek damages based on the infringement of the right of exhibition and the infringement of the sense of honor as a surviving family member)

(1) Argument of the Plaintiff

A. Demand for the payment of damages based on the infringement of the right of exhibition inherent to the Plaintiff

(A) The defendants infringe the Plaintiff's right of exhibition for the Original Kannon Statue by exhibiting the Kannon Statue.

The damage suffered by the Plaintiff as a result of the aforementioned defendants' act of tort is as follows.

The amount of solatium should be at least five million yen to compensate the emotional distress suffered by the Plaintiff as a result of the defendants' act of tort, based on a comprehensive evaluation of various factors such as [i] that the Original Kannon Statue was produced by all of the sculptors of the N Family with a long and distinguished history as a group of Buddhist statue sculptors, [ii] that the production of the Original Kannon Statue had a high value as the reconstruction of the Komagome Great Kannon, [iii] that the defendants made a major modification to an important part of the Original Kannon Statue, and [iv] that Defendant Kogenji Temple has continued offering the Kannon Statue for viewing before an extremely large number of people.

The amount of the Plaintiff's damage equivalent to the attorneys' fee that was proximately caused by the defendants' infringement of the right of exhibition inherent to the Plaintiff should be at least one million yen.

Furthermore, the solatium for the emotional distress to be suffered by the Plaintiff in the future as a result of the defendants' infringement of the right of exhibition inherent to the Plaintiff should be at least 100,000 yen per month during the period from the date following the date of the conclusion of oral argument up to the date when Defendant Kogenji Temple completed the restoration of the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced.

(B) Thus, under Article 709 of the Civil Code, the Plaintiff demands against the defendants the payment of damages of six million yen for the infringement of the right of exhibition inherent to the Plaintiff and the delay damages accrued thereon at a rate of 5% per annum for the period from September 2, 2009, which is the date following the date of service of a written petition for amendment of claims in this instance, until the date of full payment, and also demands the payment of damages of 100,000 yen per month by the end of each month during the period from December 22, 2009 (the date following the date of the conclusion of oral argument) until the time when the head part of the Kannon Statue is restored to its original state as of the time when the Original Kannon Statue was produced.

B. Demand for the payment of damages on the grounds of the infringement of the right of exhibition inherited from T and R

(A) When T and R were still alive, they owned the right of exhibition for the Original Kannon Statue. The Plaintiff and J inherited said right. The defendants' act of exhibiting the Kannon Statue constitutes infringement of the right of exhibition inherited by the Plaintiff for the Original Kannon Statue (the share of the Plaintiff). The amount of damage should be considered to be equivalent to the amount mentioned in A. above.

(B) Therefore, under Article 709 of the Civil Code, the Plaintiff is entitled to demand against the defendants the payment of damages of six million yen for the infringement of the right of exhibition that the Plaintiff inherited from T and R and the delay damages accrued thereon at a rate of 5% per annum for the period from September 2, 2009, which is the date following the date of service of a written petition for amendment of claims in this instance, until the date of full payment, and also demands the payment of damages of 100,000 yen per month by the end of each month during the period from December 22, 2009 (the date following the date of the conclusion of oral argument) until the time when the head part of the Kannon Statue is restored to its original state as of the time when the Original Kannon Statue was produced.

C. The Plaintiff's demand for the payment of damages from the defendants based on the infringement of the deep affection and sense of honor as a surviving family member

(A) The Original Kannon Statue was produced by all of the sculptors of the N Family (at least, the deceased father R, who was the leader of the Buddhist statue sculptors of the N Family, and the deceased elder brother R) with a long and distinguished history as a group of Buddhist statue sculptors, and the production of the Original Kannon Statue had a high value as the reconstruction of the Komagome Great Kannon. The Plaintiff is a surviving family member of the deceased father T, who was the leader of the Buddhist statue sculptors of the N Family, and the deceased elder brother R, and the only surviving Buddhist statue sculptor of the N Family.

The Plaintiff has a deep affection and sense of honor for the Original Kannon Statue as a surviving family member of T and R, who were engaged in the production of the Original Kannon Statue. Such emotions may be regarded as the benefits to be protected by law under Article 709 of the Civil Code.

(B) The defendants infringed the Plaintiff's deep affection and sense of honor by exhibiting the Kannon Statue. In consideration of various factors such as [i] that the Original Kannon Statue was produced by all of the sculptors of the N Family with a long and distinguished history as a group of Buddhist statue sculptors, [ii] that the production of the Original Kannon Statue had a high value as the reconstruction of the Komagome Great Kannon, [iii] that the defendants made a major modification to an important part of the Original Kannon Statue, and that [iv] Defendant Kogenji Temple

has continued offering the Kannon Statue for viewing by an extremely large number of people, the amount of solatium to compensate the emotional distress suffered by the Plaintiff as a result of the defendants' act of tort should be at least five million yen. The amount of the Plaintiff's damage equivalent to the attorneys' fee that was proximately caused should be at least one million yen.

(C) The replacement of the head part by the defendants caused emotional distress to the Plaintiff as a surviving family member of T and R. The emotional distress will continue unless the replaced head part is restored. The amount of solatium should be at least 100,000 yen per month during the period from the date of the conclusion of oral argument until the time when Defendant Kogenji Temple completes the restoration of the head part of the Kannon Statue to its original state as of the time when the Kannon statue was produced.

(D) Therefore, under Article 709 of the Civil Code, the Plaintiff demands against the defendants the damages of six million yen for the infringement of the deep affection and sense of honor that the Plaintiff had for the Original Kannon Statue as a surviving family member of T and R and the delay damages accrued thereon at a rate of 5% per annum for the period from September 2, 2009, which is the date following the date of service of a written petition for amendment of claims in this instance, until the date of full payment, and also demands the payment of damages of 100,000 yen per month by the end of each month during the period from December 22, 2009, which is the date of the conclusion of oral argument, until the time when the head part of the Kannon Statue is restored to its original state as of the time when the Original Kannon Statue was produced.

(2) Counterargument of the defendants

The entirety of the argument of the Plaintiff is disputable.

Since the Plaintiff is not an author of the Original Kannon Statue, the Plaintiff does not have a right of exhibition inherent to the Plaintiff.

The Plaintiff was not engaged in the production of the Original Kannon Statue. Therefore, in light of social norms, protection should not be provided for the deep affection and sense of honor of the Plaintiff for the Original Kannon Statue.

No. 4 Court Decision

1. Background circumstances

The details of the circumstances surrounding the production of the Original Kannon Statue and the Kannon Statue are as follows.

Based on a comprehensive evaluation of the aforementioned undisputed facts, etc. and evidence (Exhibits Ko No. 1 to No. 21, No. 25 to No. 34, No. 37, No. 43 to No. 50,

No. 54 to No. 69, No. 71, Otsu No. 1 to No. 32, No. 35 to No. 37 (the indication of sub-numbers is omitted), Witness K, Witness D, the Plaintiff, the representative of Defendant Kogenji Temple, and Defendant Y) and the entire import of the oral argument, the following facts may be found.

(1) A. The deceased T (Date of birth: February 7, 1901) was a sculptor engaged in the sculpturing of Buddhist statues as a business (Pseudonym: "T") and lived in his own residence/studio located in Nakano-ku, Tokyo (the "Studio").

The deceased T (T) and his deceased wife, L, had three children, namely, the first son, deceased R (Date of birth: February 18, 1926), the second son, J (Date of birth: January 2, 1930), and the third son, the Plaintiff (Date of birth: January 23, 1934). L passed away on July 23, 1986.

The deceased R and J were sculptors engaged in the sculpturing of Buddhist statues as a business (Pseudonym of deceased R: "R" and Pseudonym of J: "J") and lived together with T at the Studio. R (R) had neither a spouse nor children.

The Plaintiff got married on March 12, 1968 in France, where the Plaintiff was studying at École nationale supérieure des Beaux-Arts, and came back to Japan by the end of that year. The Plaintiff lived in Toride-shi, Ibaraki Prefecture, and built his own studio, where he has created sculptures. Following training from T in Buddhist statue sculpturing, the Plaintiff has been engaged in modern sculpturing and Buddhist statue sculpturing as a business.

The Plaintiff produced the King Yemma of the Kegenji Temple in Honjo, Sumida-ku, Tokyo in 1977 and also produced the Yakushi Nyorai of the Senyoji Temple in Chiba in around 1980.

The N Family sometimes produced a Buddhist statue jointly. A leaflet introduced the Shaka Nyorai Zazou of the Myosaiji Temple, which was consecrated in 1973, as having been produced by four sculptors, namely, T, R, J, and the Plaintiff. On the backside of the nimbus of the Fukuukensaku Kannon of the Myosaiji Temple, which was produced in around 1987, the names of T, R, J, the Plaintiff, and another person were stated as "sculptors."

B. Defendant Kogenji Temple is a religious cooperation managing and operating the Kogenji Temple, which is a temple of Jodo Shu located in Bunkyo-ku, Tokyo.

The Kogenji had a Kannon Hall enshrining an about 7.9 meter-high wood-carved eleven-headed Kannon Bosatsu statue (the former Great Kannon Statue) created in 1697. The former Great Kannon Statue was a Buddhist statue that had the style and characteristics of the eleven-headed Kannon Bosatsu statue, which is the principal image of the Buddha of Hasedera Temple in Nara Prefecture (Hasedera-style

eleven-headed Kannon Bosatsu statue). The former Great Kannon was called "Komagome Great Kannon" and had attracted a great number of worshippers since the Edo era.

The former Great Kannon Statue and the Kannon Hall were destroyed by fire in the Great Tokyo Air Raids on May 25, 1945.

Ever since the former Great Kannon Statue was destroyed by fire, the former chief priest M of the Kogenji Temple had been hoping to reconstruct the "Komagome Great Kannon."

C. For about six years from 1973, Defendant Y (Date of birth: November 12, 1953) learned sculpturing from Sculptor W, who won an Order of Cultural Merit in 1979. Then, Defendant Y became a pupil of the deceased R (R) in around 1980 and learned traditional Buddhist statue sculpturing and started assisting the work of R and T in the Studio. While D was a priest of the Jodo Shu Chikouji Temple, D became a pupil of R in around June 1986. Since then, D assisted the work of R and the senior pupil, Defendant Y, for about one year until around June 1987.

(2) A. Around January 1987, the former chief priest decided to reconstruct the Komagome Great Kannon and the Kannon Hall to enshrine it and placed an order with R for the reconstruction of the Komagome Great Kannon.

R prepared a rough drawing (Exhibit Otsu No. 36) on a scale of one to five and prepared a drawing of the Original Kannon Statue (please refer to Exhibits Otsu No. 8-2 and No. 8-3) and, based on the drawing, calculated the necessary amount of Hinoki material to be used to produce the Original Kannon Statue. After obtaining an estimate for the costs of the Hinoki material, R presented to Defendant Kogenji Temple the estimated production cost of the Original Kannon Statue. Defendant Kogenji Temple accepted the estimated production cost that R had presented.

B. (A) Around May 1987, the Hinoki material to be used for the production of the Original Kannon Statue was delivered to the Studio.

Around 10:00 a.m. on May 5, 1987, the former chief priest visited the Studio together with his wife, and Priest A, who was the vice-priest at that time (the current chief priest and the current representative of Defendant Kogenji Temple) and his wife. Priest A took pictures of the Hinoki material piled up in the Studio (Exhibit Otsu No. 8-1), etc.

Defendant Y and D started producing a chunk of wood by bonding Hinoki material in the Studio. R started carving (rough carving) of the chunk of wood to make the head part of the statue.

The Original Kannon Statue was one of the biggest Buddhist statues produced after

the war. It was the first time that R produced such a large head part for a Buddhist statue. This is because T used to be the person in charge of the head part for large Buddhist statues, when T was healthy.

In the case of a great Kannon statue, it is necessary to make the jaw of the head part of the statue in such a way that the statue appears to be tucking in its chin in order for the statue to seem to look down toward the worshipers looking up. However, R did not take this point into consideration and failed to make the statue appear to be tucking in its chin, and only made its eyes seem to be looking downward. As a result, the Original Kannon Statue ended up having an unnatural facial expression. From the viewpoint of the worshipers looking up at the statue, the statue did not have half-open eyes, but a surprised expression in its eyes.

R had Defendant Y produce the nimbus of the Original Kannon Statue, and Defendant Y made a drawing, did the sculpting and completed the nimbus. Meanwhile, the body part of the Original Kannon Statue was produced mainly by Defendant Y under the instructions of R.

(B) Having been notified by R that the rough carving of the head part of the statue was completed and asked to come over for checking, the former chief priest visited the Studio together with his wife, and Priest A and his wife and child at around 3:00 p.m. on June 14, 1987. At that time, in the presence of T and R, the former chief priest wrote characters, etc. such as Sanskrit characters "Komagome Great Kannon" inside the roughly-carved head part in sumi (black ink).

Priest A took some photographs including a photograph of the former chief priest writing characters in sumi inside the head part of the statue (Exhibits Otsu No. 9-1-1 to No. 9-1-5), a photograph of the head part and the characters written inside (Exhibit Ko No. 6), and a photograph showing three persons, namely, the former chief priest, T, and R, appearing with the head part of the statue placed in the middle of them (Exhibit Ko No. 7).

C. (A) On July 24, 1987, the former chief priest visited the Studio with Priest A. Priest A took a photograph of the head part inserted into the body part (Exhibit Otsu No. 10). The woodcarving of the body part was complete up to its chest.

(B) On August 25, 1987, the former chief priest visited the Studio together with his wife, and Priest A and his wife and child. At that time, Priest A took a photograph of the head part inserted into the body part, a photograph of R making a pose of sculpturing the head part and the body part of the statue, standing on the scaffold built for the work (Exhibit Otsu No. 11-1), and a photograph showing five persons, namely, the former chief priest, his wife, and Priest A's wife and child, with R who took the pose of

sculpturing the statue on the scaffold appearing in the background (Exhibit Ko No. 25).

(C) Having been notified by R that the rough carving of the body part of the statue was completed, the former chief priest visited the Studio together with his wife, and Priest A and his wife and child at around 3:00 p.m. on October 20, 1987. At that time, Priest A took a photograph of five persons, namely, the former chief priest, his wife, Priest A's wife and child, and R with the roughly-carved body part of the Buddhist statue to which the head part and the arm parts (from the shoulder to the elbow) were attached appearing in the background (Exhibit Otsu No. 12-2).

(D) Having been notified by R that R was carving the arm parts, the former chief priest visited the Studio together with Priest A in the morning of January 10, 1988. At that time, Priest A took photographs, including a photograph of two persons, namely, the former chief priest and R with the body part of the Buddhist statue to which the head part and the arm parts (from the shoulder to the tip of the finger; hereinafter the same) were attached appearing in the background (Exhibit Otsu No. 13-2).

(E) Having been notified by R that the sculpturing of the transformed images of Buddha to be attached to the head part was completed, the former chief priest visited the Studio together with Photographer H on April 8, 1988. The former chief priest had H take photographs of various parts of the Buddhist statue consisting of the body part to which the head part and the arm parts were attached and the transformed images of Buddha still in the process of sculpturing (Exhibit Otsu No. 22).

(F) On June 20, 1988, the former chief priest was interviewed by a newspaper reporter from Mainichi Newspaper Co., Ltd. about the reconstruction of the Komagome Great Kannon.

Subsequently, the Mainichi newspaper issued on June 22 (Exhibit Ko No. 4) carried an article with the main title "Reconstruction of the 'Komagome Great Kannon' of the Kogenji Temple" with a subtitle "lost by fire in an air raid, under reconstruction thanks to the efforts of the chief priest," etc. stating that the Great Kannon was under construction.

Said article stated that "The order for the production of the statue was placed with a Buddhist statue sculptor, R (omitted). In May of the previous year, Kiso Hinoki was carried into the studio of R. R has been engaged in the woodcarving since June of the previous year together with his two pupils. The height of the statue is 3.63 m or 5.15 m including the nimbus and pedestal. The statue is an eleven-headed Kannon statue like the previous one, holding *Shakujo* (rod) in the right hand, and *Renge* (lotus) in the left hand. The statue is scheduled to be completed in October 1989, when the lacquering and gilding process is expected to be finished (omitted). Since the hall to enshrine the

Kannon statue will also be constructed, a ceremony to consecrate the newly-made Buddhist statue will be held in four or five years." Also, the aforementioned article showed a photograph of the Buddhist statue with its head part and arm parts attached to its body part and R taking a pose of sculpturing the statue, with the explanation, "the Kannon statue and Mr. R, famous for the parquet method."

(G) T had been periodically visiting a hospital for treatment of renal hypertension, etc, but had been unable to visit the hospital since late May 1988 and passed away on July 29, 1988.

Subsequently, the Chugainippoh newspaper issued on August 9, 1988 (Exhibit Ko No. 5) carried an article with the titles "Reconstruction of 'Komagome Great Kannon' Jodo Shu Kogenji Temple," "Destroyed by Fire in the Last Air Raid," "43-Year Dream of the Chief Priest A for Reconstruction," and "Produced by Buddhist Statue Sculptor R with All His Soul," etc. stating that the "Komagome Great Kannon" was under reconstruction. Said article explained the statue as "'Komagome Great Kannon' produced by the parquet method" and showed a photograph of the Buddhist statue with its head part and arm parts attached to its body part and a photograph of three persons, namely, the former chief priest, T, and R with the roughly-carved head part placed almost in the middle of them (Exhibit Ko No. 7).

(H) Having been notified by R that the transformed images of Buddha were attached to the head part, the former chief priest visited the Studio together with his wife and H at around 1:00 p.m. on August 11, 1988. H took front-shot and back-shot photographs of the statue with its arm parts and head part including the transformed images of Buddha attached to its body part (Exhibits Ko No. 27 and No. 28) and a photograph of five persons, namely, the former chief priest, his wife, R, J, and Defendant Y with the Buddhist statue in the background (Exhibits Ko No. 26).

Subsequently, for one week from August 23, 1988, the head part including the transformed images of Buddha was presented in the 35th Buddhism Art Sculpture Exhibition held in the Nihonbashi Mitsukoshi Department Store.

(I) Having been notified by R that the woodcarving process of the nimbus was almost over, the former chief priest visited the Studio together with his wife and Priest A and his wife and child at around 2:00-3:00 p.m. on January 28, 1989. At that time, Priest A took a photograph of the nimbus (Exhibit Otsu No. 14-1) and a photograph of seven persons, namely, the former chief priest, his wife, Priest A's wife and child, R, J, and Defendant Y with the nimbus in the background (Exhibits Otsu No. 14-3).

D. R suffered a cerebral infarction on May 6, 1989 and was hospitalized from that day until June 24, 1989.

On June 14, while he was hospitalized, the former chief priest visited the Studio with his wife. The former chief priest wrote a prayer, "願天下和順 莊嚴国土" (peaceful world, beautiful land), etc. in sumi (black ink) inside the hollowed out body part (Exhibit No. 9). While the former chief priest was writing this statement, photographs were taken. One of the photographs shows J, who was watching the former chief priest writing the statement (Exhibit Ko No. 30).

Inside the aforementioned body part, the statements, "Great Buddhist Sculptor & Director T" and "Producers R, J, X" were written by the Plaintiff in sumi (Exhibit Ko No. 10). Regarding the statement "Pupil Y" written in sumi (black ink) (Exhibit Ko No. 10) on the left side of the statement "X" written in sumi inside the aforementioned body part, the "Y" part was written by Defendant Y, while the "Pupil" part was written by the Plaintiff. During and after hospitalization, R did not complain about the Plaintiff's act of writing these statements inside the body part.

After the commencement of the production of the Original Kannon Statue, the Plaintiff visited the Studio at least twice every month. The Plaintiff was engaged in the production of his own works on the second floor of the Studio. During the period from around late May 1988, when T's health deteriorated, until July 29, 1988, when T passed away, the Plaintiff frequently visited the Studio.

When the Plaintiff visited the Studio, he checked and understood the progress in the production of the Original Kannon Statue carried out on the first floor of the Studio. When the Plaintiff visited the Studio during said period when R was hospitalized, he said to Defendant Y, "Finish this part," pointing to the foot of the Kannon statue, which was laid down on the floor. Defendant Y rejected the Plaintiff's request by saying, "It's none of your business."

E. (A) Defendant Y became independent from R in early September 1989 and opened a studio in Sakura City, Chiba Prefecture. After that date, Defendant Y was not involved in the production of the Original Kannon Statue.

(B) Having been notified by R that the sculpturing process was completed, the former chief priest visited the Studio together with Priest A at around 2:00 p.m. on October 10, 1989 in order to take photographs.

Priest A took photographs (Exhibits Otsu No. 30-2 and No. 31-2) of the Buddhist statue with the transformed images of Buddha attached to its head part and also with *Shakujo* (rod) held in the right hand ("Original Kannon Statue").

Subsequently, H, who was requested by Priest A to take photographs, visited the Studio in around October 1989 and took a photograph showing the Buddhist statue standing on the pedestal with the transformed images of Buddha attached to its head

part and also with *Shakujo* (rod) held in the right hand and *Renge* (lotus) held in the left hand ("Original Kannon Statue") and the nimbus for the Buddhist statue placed next thereto. In around 1991, the former chief priest created postcards with the aforementioned photograph taken by H printed on the back side thereof (Exhibit Ko No. 11).

(C) October 10, 1989 is the last day on which the former chief priest and Priest A visited the Studio to check the progress of the production of the Original Kannon Statue.

On occasions when the former chief priest and Priest A visited the Studio in order to check the progress of the production as mentioned above, they never met the Plaintiff except for June 14, 1989 (D. above) while R was hospitalized.

F. (A) The former chief priest requested Takezawa Early Japanese Architecture Design Office (hereinafter referred to as the "Takezawa Office") to submit an estimate for construction of a new Kannon Hall to enshrine the Original Kannon Statue. The former chief priest received from the Takezawa Office a design drawing (Exhibit Otsu No. 37) and an estimate dated April 8, 1989 stating that the total construction cost would be 350 million yen.

In around the same year, after the former chief priest consulted with K, a supporter of the Kogenji Temple ("K"), by showing the aforementioned estimate and design drawing, the former chief priest requested K to be in charge of designing and managing the construction of a new Kannon Hall where the Original Kannon Statue would be enshrined.

Then, on around January 15, 1990, the former chief priest had a discussion with K about the construction of the studio for the lacquering and gilding processes for the Original Kannon Statue ("Lacquering Studio"). K made necessary arrangements for the construction of the Lacquering Studio (prefabricated building).

(B) On March 12, 1990, the Original Kannon Statue was carried out from the Studio into the Lacquering Studio, which was constructed within the premises of the Kogenji Temple. The lacquer painters (lacquering craftworkers) commenced the lacquering and gilding processes for the Original Kannon Statue.

On the same day, the former chief priest held a service to commemorate the delivery of the Original Kannon Statue to the Lacquering Studio. While R and Defendant Y attended the aforementioned service, J and the Plaintiff did not.

During the ceremony, the body part of the Original Kannon Statue was laid down and placed in the front and a ceremonial photograph of the attendees was taken. In the foot tenon of the Original Kannon Statue, which appeared in the ceremonial photograph (Exhibit Otsu No. 3), the statement "Director T" and "Producers R, J, X, and Y" written

in sumi can be seen. These statements were written by R in around 1988 to 1989.

(3) A. In around 1993, the Kannon Hall ("Kannon Hall") to enshrine the Original Kannon Statue was completed on the premises of the Kogenji Temple. The designing and construction management of the Kannon Hall was carried out by K. Ceramic reliefs are attached to the walls of the Kannon Hall; these reliefs were produced by the Plaintiff upon request from K.

B. In around May 1993, the Plaintiff detached the head part from the Original Kannon Statue after the lacquering and gilding processes were completed. He took it to the Studio and colored and drew the eyes of the Original Kannon Statue, and then brought back the head part and attached it into the body part of the Original Kannon Statue.

In around the same month, the Original Kannon Statue, for which all of the production processes had been completed, was carried out from the Lacquering Studio and placed in the Kannon Hall. At that time, a photograph (Exhibit Ko No. 31) showing the former chief priest and his wife, Priest A and his wife and child, R, the Plaintiff, lacquer painters, etc. was taken with the Original Kannon Statue in the background.

C. (A) On May 18, 1993, the former chief priest held a ceremony to consecrate the newly-made Buddhist statue. R, J, the Plaintiff, and Defendant Y attended the aforementioned service. In the aforementioned service, in front of the Kannon Hall, a ceremonial photograph (Exhibit Ko No. 12) showing the former chief priest and his wife, Priest A and his wife, R, J, the Plaintiff, Defendant Y, K, etc. was taken.

(B) Since the service was held as mentioned in (A) about, the Original Kannon Statue enshrined in the Kannon Hall has been offered for public viewing. Supporters and general worshipers have come to the Kannon Hall to pray.

(4) On July 18, 1994, the Plaintiff repaired the eyes of the Original Kannon Statue. Priest A was not satisfied with the result of the repair and requested the Plaintiff to repair the statue again. By July 20, 1994, the Plaintiff had repaired the eyes of the Original Kannon Statue once again.

(5) A. On December 26, 1994, the former chief priest passed away. Subsequently, Priest A became the chief priest of the Kogenji Temple. On February 23, 1995, he became the representative officer of Defendant Kogenji Temple.

B. In the article titled "Visit to famous craftspersons (Tokyo)" published in Shukyo Kougei Shimbun (religious art newspaper) dated June 15, 1995 (Exhibit Ko. 1), R was introduced under the subtitles "the fifth-generation Edo sculptor of Buddha statues" and "Buddhism statue sculptor, Mr. R." In the aforementioned article, it is stated that "his recent major work is the creation of the Komagome Great Kannon, which is a large Buddhist statue that is 8 m high from the pedestal to the nimbus and is plated with pure

gold. It took two and a half years for production. A ceremony to consecrate the newly-made Buddhist statue was held two years ago. He greatly appreciates the support from younger brothers Mr. J and Mr. X (action art member), who always work together with R." In the article, a photograph of the Original Kannon Statue is also shown under the title "Tokyo Komagome Kogenji Temple Great Kannon (R)."

C. In 1998, J closed his business as a Buddhist statue sculptor due to illness.

On September 28, 1999, R passed away.

D. On November 26, 2000, the current chief priest, Priest A, held a ceremony for the sixth anniversary of the death of the former chief priest. While the Plaintiff attended said ceremony, J and Defendant Y did not. In the seating chart for the meal after the ceremony (Exhibit Ko No. 44), the Plaintiff was introduced as a "joint sculptor of the reconstructed Komagome Great Kannon."

(6) A. The current chief priest, Priest A, had been clearly aware of the strange expression on the face of the Original Kannon Statue, since the Original Kannon Statue enshrined in the Kannon Hall had wide open eyes and appeared surprised or to be glaring from the viewpoint of worshipers looking up at the Original Kannon Statue. Priest A had also been receiving complaints from supporters and general worshipers that the facial expression of the Original Kannon Statue made them feel uneasy and also receiving requests from them that appropriate measures should be taken so that the statue would have a facial expression showing tender mercy.

The current chief priest, Priest A, consulted with Defendant Y in around 2003 and was given the advice that there are several ways to modify the facial expression of the Original Kannon Statue, such as re-carving only the eyes or the front section of the face, but that since there is a high risk of failure, it would be better to re-create the head part of the statue. Based on this advice, the current chief priest, Priest A, decided to have the head part re-created. In around the same year, the current chief priest, Priest A, notified the Plaintiff of his plan to place an order with Defendant Y for the re-creation of the head part of the Original Kannon Statue. The Plaintiff refused the very idea that the head part should be re-created.

Priest A placed an order with Defendant Y for the recreation of the head part. Based on this order, Defendant Y re-created the head part during the period from 2003 to 2006 and replaced the head part of the Original Kannon Statue with the newly created head part. The Kannon statue with the replaced head part ("Kannon Statue") was offered for public viewing in the Kannon Hall. The head part prior to the replacement is shown in the three photographs on the right side of the Photograph List attached to this judgment, whereas the head part after the replacement is shown in the three photographs on the left

side of the Photograph List. The head part detached from the Original Kannon Statue (the head part prior to the replacement) has been stored and kept in the Kannon Hall without any alterations. Priest A announced the aforementioned replacement neither to the public nor to the Plaintiff.

B. (A) In around October 2006, the Plaintiff noticed that the Kannon Statue, which was created by replacing the head part of the Original Kannon Statue, had been enshrined in the Kannon Hall and offered for public viewing.

(B) The counsel attorney of the Plaintiff sent a content-certified letter that was received by Defendant Kogenji Temple on October 18, 2006 (Exhibits Ko No. 15-1 and No. 15-2) and requested Defendant Kogenji Temple to take measures to restore the head part of the Kannon Statue to its original state because the replacement of the head part of the Original Kannon Statue constituted infringement of the moral rights of author of the Plaintiff, who is a joint producer of the Original Kannon Statue.

In the document dated October 27, 2006 (Exhibit Ko No. 16), Defendant Kogenji Temple notified to the counsel attorney of the Plaintiff that [i] Since Defendant Kogenji Temple continued receiving criticisms from supporters and worshipers about the face of the Original Kannon Statue, Defendant Kogenji Temple decided to modify the face of the statue in consideration of the fact that the Komagome Great Kannon is an object of worship, [ii] Defendant Kogenji Temple is carefully storing the head part of the Original Kannon Statue, [iii] Defendant Kogenji Temple would not hesitate to restore the head part to its original state if it is strongly requested by believers, but hopes that the Plaintiff will approve the current state.

(C) The counsel attorney of the Plaintiff sent a content-certified letter received by Defendant Kogenji Temple on November 18, 2006 (Exhibits Ko No. 17-1 and No. 17-2). In the letter, the counsel attorney of the Plaintiff requested Defendant Kogenji Temple to restore the head part of the Kannon Statue to its original state by the end of December 2006.

Furthermore, the counsel attorney of the Plaintiff sent a content-certified letter received by Defendant Kogenji Temple on November 18, 2006 (Exhibits Ko No. 18-1 and No. 18-2). In the letter, the counsel attorney requested Defendant Y to give an explanation about how Defendant Y was involved in the replacement of the head part of the statue and to send an apology letter to the Plaintiff, etc.

(D) Defendant Y sent a written reply dated December 14, 2006 (Exhibit Ko No. 19) and explained to the counsel attorney of the Plaintiff that [i] while it is the deceased R (R) who sculptured the head part of the Original Kannon Statue, the deceased R himself hoped to re-create the face of the Original Kannon Statue because the statue had a

strange expression on its face and did not have a facial expression of tender mercy and [ii] Defendant Y decided to produce the head part of the statue anew on behalf of the deceased R in order to accomplish the will of the deceased R.

C. The Plaintiff filed his lawsuit on September 13, 2007.

2. The issue of co-authorship of the Plaintiff (Issue 1), the issue of whether the Plaintiff is entitled to seek an injunction, etc. against the infringement of the right to maintain integrity (Issue 2), the issue of whether the Plaintiff is entitled to seek restoration, etc. under Article 115 of the Act (Issue 3), the issue of whether the Plaintiff is entitled to request measures against the act that may be deemed to constitute infringement of the moral rights of author of the Plaintiff (Issue 4), the issue of whether the Plaintiff is entitled to seek an injunction, etc. against the infringement of the rights of exhibition as the author of the original work of a derivative work (Issue 5), the issue of whether the Plaintiff is entitled to demand damages for an act of tort consisting of the infringement of the moral rights of author and an act that may be deemed to constitute infringement of the moral rights of author of the Plaintiff (Issue 6), the issue of whether the Plaintiff is entitled to seek an apology advertisement (including a correction advertisement) for an act of tort consisting of the infringement of the moral rights of author and an act that may be deemed to constitute infringement of the moral rights of author of the Plaintiff (Issue 8)

We would like to determine whether the Plaintiff is entitled to make claims based on the fact that the Plaintiff created the Original Kannon Statue.

(1) Facts found by the court

Both parties agree that, inside the body part of the Original Kannon Statue, the statements "Great Buddhist Sculptor & Director T" and "Producers R, J, X / Pupil Y" are written in sumi (black ink), and inside the foot tenon of said statue, the statements "Director T" and "Producers R, J, X, Y" are written in sumi.

However, in this court case, there is no evidence to prove that the Plaintiff was involved in the production of the Original Kannon Statue by the end of September 1989, when the woodcarving of the Original Kannon Statue was almost complete, except for the oral and written statements stating that the Plaintiff was involved in the production. Since there are no other objective documents, statements, testimony, etc., based on a comprehensive evaluation of the following evidence, it may be found that the Plaintiff was not involved in the production of the Original Kannon Statue by the end of September 1989, when the woodcarving of the Original Kannon Statue was almost complete.

The reasons therefor are as follows.

A. Evaluation of evidence

(A) As described below, in a personal interview, Defendant Y gave detailed and concrete description about the progress and process of production of the Original Kannon Statue during the period from around January 1987 to September 1989, when Defendant Y became independent from R.

[i] In around May 1987, R and his pupil, Defendant Y, commenced the woodcarving process of the Original Kannon Statue and completed the finishing process in the middle of September 1989. During this period, the Plaintiff was not involved in the production of the Original Kannon Statue.

[ii] In May 1989, R was hospitalized due to a cerebral infarction. During about one month until R was discharged from the hospital, Defendant Y suspended the woodcarving process of the Original Kannon Statue. He resumed the woodcarving process only after R left the hospital. When R was hospitalized, the woodcarving process was complete except for the finishing stage.

[iii] While R was hospitalized, the Plaintiff tried to give an instruction concerning the production of the Original Kannon Statue. However, Defendant Y refused the request.

(B) According to the evidence (including statements), the following facts may be found.

[i] The photographs taken by Priest A on October 10, 1989, of the Buddhist statue with the transformed images of Buddha attached to its head part and also with *Shakujo* (rod) in the right hand (Original Kannon Statue) (Exhibits Otsu No. 30-2 and No. 31-2) and the photograph taken by Photographer H in around October 1989 showing the Buddhist statue standing on the pedestal with the transformed images of Buddha attached to its head part and also with *Shakujo* (rod) in the right hand and *Renge* (lotus) in the left hand (Original Kannon Statue) and the nimbus for the Buddhist statue placed next thereto (the first photograph of Exhibit Ko No. 11) (1., (2), E., (B) above) show that the Original Kannon Statue was carved into detail as of October 1989, when the aforementioned photographs were taken.

[ii] The former chief priest visited the Studio to check the progress in the production of the Original Kannon Statue eleven times, namely, May 5, June 14, July 24, August 25, October 20 in 1987, January 10, April 8, August 11 in 1988, and January 28, June 14, October 10 in 1989. Except for June 14, 1989, while R was hospitalized, the former chief priest did not see the Plaintiff (1. (2) B. (A) and (B), C. (A) to (E), (H), (I), and E. (B) and (C)).

[iii] The Plaintiff does not appear in the photographs taken by the former chief priest when he visited the Studio (Exhibits Ko No. 7 to No. 10, No. 25 to No. 28, No. 30, Exhibits Otsu No. 8-1 to No. 8-3, No. 9-1-1 to No. 9-1-5, No. 9-2, No. 10, No. 11-1 to

No. 11-3, No. 12-1, No. 12-2, No. 13-1, No. 13-2, No. 14-1 to No. 14-4, No. 17-1 to No. 17-5, No. 18 to No. 20, No. 21-1 to No. 21-4, No. 22, No. 23, etc.).

[iv] According to the testimony of Witness D, D learned how to produce Buddhist statues as a pupil of R during the period from around June 1986 to around June 1987 and was engaged in the production of the Original Kannon Statue by supporting the work of the senior pupil, Defendant Y, during the period from around May 1987 to around June 1987. During that period, the Plaintiff was not engaged in the production of the Original Kannon Statue.

[v] According to the statement of the representative of Defendant Kogenji Temple (Priest A), having been notified that the sculpturing of the Original Kannon Statue was complete, Priest A visited the Studio together with the former chief priest on October 10, 1989, in order to take photographs of the statue. At that time, Priest A took some photographs of the Original Kannon Statue (Exhibits Otsu No. 30-2 and No. 31-2). Also, Priest A visited the Studio seven times, namely, May 5, June 14, July 24, and August 25 in 1987, January 10 in 1988, and January 28 and October 10 in 1989, in order to check the progress in the production of the Original Kannon Statue. On these occasions, Priest A never met the Plaintiff. As far as Priest A knows, the Plaintiff was not engaged in the production of the Original Kannon Statue at all except for the repair of the eyes of the statue.

[vi] October 10, 1989 is the last day on which the former chief priest and Priest A visited the Studio to check the progress in the production of the Original Kannon Statue (1., (2), E., (C) above).

(C) Based on a comprehensive evaluation of the fact stated in (B) above and other evidence, the aforementioned statement of Defendant Y to the effect that the Plaintiff was not engaged in the production of the Original Kannon Statue during the period from around May 1987, when the production of the Original Kannon Statue was commenced, until September 1989, when Defendant Y became independent, is reliable.

Furthermore, based on a comprehensive evaluation of the facts described in (B) [i], [v], and [vi] above and the statement of Defendant Y (including the written statement presented as Exhibit Otsu No. 7) and the statement of the representative of Defendant Kogenji Temple (including the written statement presented as Exhibit Otsu No. 28), it may be presumed that, as far as the woodcarving process of the Original Kannon Statue is concerned, the finishing process was almost completed as of the time when Defendant Y became independent.

B. Evaluation of the Plaintiff's statements, etc.

(A) On the other hand, in a personal interview, the Plaintiff stated as follows. The

corresponding statements are included in his written statement (Exhibit Ko No. 37):

An order for the production of the Original Kannon Statue was placed with the N Family. The work was shared among family members. While T was healthy, he was in charge of the production of the head part. After he passed away, R was in charge of most of the production of the head part. J was in charge of the production of the body part. J and the Plaintiff were in charge of the production of arm parts, nimbus, and pedestal, and the Plaintiff was in charge of the transformed images of Buddha. After R was discharged from the hospital, during the period until around the end of June 1989, the detailed carving was almost completed. The finishing process was about to begin. After R was discharged from the hospital, R suffered a great decline in mental strength. Since there were no prospects for recovery, the Plaintiff took the initiative in carrying out the finishing process. As of September 1989, when Defendant Y became independent, about 90% of the woodcarving of the Original Kannon Statue was complete. The finishing process was completed shortly before the Original Kannon Statue was carried into the Lacquering Studio on March 12, 1990. During around the one-week period before the statue was carried in, the Plaintiff had to work throughout the night almost every day. The finishing process mostly consisted of the re-sculpturing and re-carving of the arm parts and body part. On the other hand, the Plaintiff was not engaged in the production of the head part of the statue nor was engaged in the re-sculpturing and re-carving of the nimbus in the course of the finishing process. More specifically, the finishing process involved such work and stages as carving with great care in order to prevent the subsequent lacquering process from blurring carved shapes and also correcting how the texture and material of the clothing of the statue looked.

(B) The Plaintiff made a statement (including the aforementioned written statement) that the Plaintiff was in charge of the production of the transformed images of Buddha, arms, nimbus, and pedestal of the Original Kannon Statue and took the initiative in the finishing process during the time from around the end of June 1989 until shortly before the time when the statue was carried into the Lacquering Studio on March 12, 1990. However, we cannot accept this statement because it lacks substance in comparison with the statement of Defendant Y concerning the process and progress of the production of the Original Kannon Statue and also because the Plaintiff's statement is inconsistent with the facts described in A., (B), [i] to [v] above.

Even if we presumed that the statement of Defendant Y, which is inconsistent with the Plaintiff's statement, is true, the statement of Defendant Y does not provide any information about whether the Plaintiff was involved in the finishing process of the Original Kannon Statue during the period from October 1989, when Defendant Y had

already become independent, until March 12, 1990, when the statue was carried into the Lacquering Studio. Therefore, further examination is made below to figure out whether or not the Plaintiff was involved in the finishing process in any way.

As described above, the Plaintiff stated that the finishing process was completed shortly before the time when the Original Kannon Statue was carried into the Lacquering Studio and that the Plaintiff had to work throughout the night almost every day during around the one-week period preceding the carry-in date. However, the Plaintiff did not give any concrete statement regarding the process and progress of the relevant work. In light of the photographs mentioned in A., (B), [i] above, the finishing process conducted by the Plaintiff during the period from October 1989 until March 12, 1990, may not be found to be the creative involvement in the production of the Original Kannon Statue.

(C) None of Exhibits Ko No. 1, No. 34, No. 44, and No. 71, which, according to the Plaintiff, objectively show that the Plaintiff was engaged in the production of the Original Kannon Statue, provide specific descriptions of the Plaintiff's involvement in the production of the Original Kannon Statue or the Plaintiff's creative involvement in the production of the Original Kannon Statue in the course of the finishing process conducted from October 1989 until March 12, 1990.

In short, none of the following three statements provides specific descriptions of how the Plaintiff was involved in the production of the Original Kannon Statue: [i] the statement in the Shukyo Kougei Shimbun (Religious Art Work Newspaper) published on June 15, 1995 (Exhibit Ko No. 1) that "The recently completed work (of R) is the Great Kannon of the Komagome Kogenji Temple. The younger brothers, Mr. J and Mr. X (a member of the Kohdo Bijutsu Japan (action art association)), who always work together with R, have been great help," [ii] the statement in the introduction letter dated July 30, 1988 written by Doctor Z (Exhibit Ko No. 34) that "(T is) producing the Kannon statue together with his three sons," and [iii] the statement made in the seating chart for the sixth anniversary of the death of the former chief priest held on November 26, 2000 (the seating chart for the meal after the service, Exhibit Ko No. 44) that introduced the Plaintiff as a "joint sculptor of the reconstructed Komagome Great Kannon."

In light of the fact that T and R had already passed away and J had closed his business of sculpturing Buddhist statues due to illness as of the date when the sixth anniversary of the death of the former chief priest was held, the Plaintiff seems to be regarded as a substitute for R, who was engaged in the production of the Original Kannon Statue. Therefore, the fact that the Plaintiff was introduced as a "joint sculptor

of the reconstructed Komagome Great Kannon" does not provide grounds for considering the Plaintiff as a producer of the Original Kannon Statue.

In a ceremony to consecrate the newly-made Buddhist statue held on May 18, 1993, a speech of the former chief priest was videotaped (Exhibit Ko No. 71). The videotape has a section where the former chief priest stated "This Komagome Great Kannon Statue was produced by Mr. R under the supervision of Buddhist statue sculptor T. (omitted) The pedestal, nimbus, etc. were also completed thanks to the cooperation from Mr. J, Mr. X, and Mr. Y." This section merely indicates that the former chief priest recognizes that it was R who was in charge of the "production" of the Original Kannon Statue and the Plaintiff was merely one of the "people who offered cooperation" for the production of the "pedestal, nimbus, etc."

In the testimony of Witness K, K mentioned that the Plaintiff was introduced by the former chief priest in April or May 1990 and that, at that time, the former chief priest said that the Plaintiff, as one of the Buddhist statue sculptors of the N Family, contributed considerably to the production of the Original Kannon Statue. However, said section of the testimony does not provide concrete grounds for proving how the Plaintiff was involved in the production of the Original Kannon Statue.

C. Other evidence

The Plaintiff presented various facts to prove his authorship, such as the career history of the Plaintiff, the system of joint production adopted by the N Family in the past, the recognition by the people concerned and third parties, and the treatment of the Plaintiff as an author. However, the career history of the Plaintiff and the system of joint production adopted by the N Family in the past may not be considered to clarify who was involved in the production of the Original Kannon Statue in which Defendant Y participated. Moreover, the recognition by the people concerned and third parties and the treatment of the Plaintiff as an author merely indicate that the Plaintiff was recognized as a member of the N Family led by T and R and do not provide sufficient grounds for proving the Plaintiff's involvement in the production of the Original Kannon Statue.

D. Summary

As described above, since there are some facts that reversed the presumption specified in Article 14 of the Act, the Plaintiff may not be considered to be a co-author of the Original Kannon Statue.

(2) Determination

As described above, since the Plaintiff may not be considered to be a co-author of the Original Kannon Statue, the Plaintiff's claims related to Issues 2 to 6, Issue 8

(Claims made based on the rights inherent to the Plaintiff), which are raised based on the presumption that the Plaintiff is a co-author of the Original Kannon Statue, are all groundless.

3. As a surviving family member of T, the issue of whether the Plaintiff is entitled [i] to seek an injunction against the offering of the Kannon Statue for public viewing under Article 112 and Article 115 of the Act, [ii] to seek the restoration of the head part to its original state based on the right to demand appropriate measures under Article 112 and Article 115 of the Act, [iii] to demand an apology advertisement (including a correction advertisement) to restore the honor and reputation of the author under Article 115 of the Act, and [iv] to seek an injunction against the offering of the statue for public viewing based on the infringement of the right of exhibition inherited from T (Article 112, paragraph (1) of the Act), to seek restoration of the statues to its original state (Article 112, paragraph (2) of the Act), and to seek the payment of damages (Issues 7 to 10: the claims related to T)

(1) Facts found by the court

The Plaintiff argues that T may be presumed to be an author (co-author) of the Original Kannon Statue under Article 14 of the Act based on the fact that the statements "Great Buddhist Sculptor & Director T" and "Director T" are written in sumi inside the body part and inside the foot tenon of the Original Kannon Statue respectively, which is the original work for the work in question, and thereby "T," which is the pseudonym of T (the deceased T), was indicated as the name of author in the ordinary manner.

However, the Plaintiff's claim may be considered to be groundless as follows.

According to the aforementioned undisputed facts, etc. (No.2, 2., (2), C. above), the statements "Great Buddhist Sculptor & Director T" and "Director T" are written in sumi inside the body part and inside the foot tenon of the Original Kannon Statue respectively.

However, it may be considered that there is a fact that prevents us from presuming that T is an author of the Original Kannon Statue based on the aforementioned "T" written in sumi, in light of the facts that [i] in the statement of Defendant Y (including the written statement of Exhibit Otsu No. 7), it is mentioned that the dementia of T was getting worse from around May 1987 and that T was not in a state of being able to take part in the production of the Original Kannon Statue and therefore was not involved in the production, [ii] in 1987, when the Original Kannon Statue was being produced, T periodically visited a hospital, but from late May 1988, he was unable to visit the hospital and passed away on July 29, 1988 (1., (2), C., (G) above).

In the statement of the Plaintiff (including the written statement of Exhibit Ko No.

37), it is mentioned that the production of the Original Kannon Statue was carried out by T when T was healthy, but after the death of T, it was carried out mostly by R. It is also mentioned that the rough carving of the transformed images of Buddha was carried out by T and R. However, in light of such part of the Defendant Y's statement that contradicts with this, the aforementioned statement of the Plaintiff is totally unacceptable.

There is no other sufficient evidence that can prove that T is an author of the Original Kannon Statue.

(2) Determination

Thus, all of the following claims that the Plaintiff made as a surviving family member of T are groundless: [i] claim to seek an injunction against the offering of the Kannon Statue for public viewing, [ii] claim to seek the restoration of the head part to its original state based on the right to demand appropriate measures, [iii] claim to demand an apology advertisement (including a correction advertisement) to restore the honor and reputation of the author, [iv] claim to seek an injunction against the offering of the statue for public viewing based on the infringement of the right of exhibition inherited from T (Article 112, paragraph (1) of the Act), claim to seek restoration of the statues to its original state (Article 112, paragraph (2) of the Act), and claim to seek the payment of damages.

4. As a surviving family member of R, the issue of whether the Plaintiff is entitled [i] to seek an injunction against the offering of the Kannon Statue for public viewing under Article 112 and Article 115 of the Act, [ii] to seek the restoration of the head part to its original state based on the right to demand appropriate measures under Article 112 and Article 115 of the Act, and [iii] to demand an apology advertisement (including a correction advertisement) to restore the honor and reputation of the author under Article 115 of the Act (Issues 7 to 9: the claims related to the infringement of the moral rights of author of R)

(1) Introduction

After one author, R, passed away, the Plaintiff, as a surviving family member of R, demanded the following in order to stop any act that could constitute infringement of the moral rights of author (the rights specified in Article 20 and Article 113, paragraph (6) of the Act) if the author were still alive: [i] an injunction against the offering of the Kannon Statue for public viewing under Article 112 and Article 115 of the Act, [ii] the restoration of the head part to its original state based on the right to demand appropriate measures under Article 112 and Article 115 of the Act, and [iii] an apology advertisement (including a correction advertisement) to restore the honor and reputation

of the author under Article 115 of the Act (Article 20, Article 113, paragraph (6), Article 116, paragraph (1), and Article 60 of the Act).

In response, the defendants made the counterargument that the replacement of the head part [i] may not be regarded as "modification thereof (omitted) made against his intent (R's intent)" as specified in Article 20, paragraph (1) of the Act, but may be regarded as the "case where it is found to not be against the will of" R as specified in the proviso of Article 60 of the Act, [ii] may be regarded as "modifications that are considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation" as specified in Article 20, paragraph (2), item (iv) of the Act, and [iii] may not be regarded as an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113, paragraph (6) of the Act.

This court found that Defendant Kogenji Temple's act of replacing the head part of the Kannon Statue [i] should be regarded as infringement of the moral rights of author of R if R, one of the authors, were still alive (the right to maintain integrity, Article 20 of the Act), [ii] constitutes an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113, paragraph (6) of the Act and should be regarded as infringement, and [iii] does not constitute an act permitted under the proviso of Article 60 of the Act, etc. Therefore, it may be interpreted that, as a surviving family member of R, the Plaintiff is entitled to demand appropriate measures, etc. specified in Article 115 of the Act in order to restore the honor and reputation of R under Article 116, paragraph (1) of the Act. Based on a comprehensive evaluation of all of the facts, this court found that, in order to restore the honor and reputation of R as specified in Article 115 of the Act, it would suffice if the defendant publishes an advertisement explaining the circumstances under which they replaced the head part of the Kannon Statue and that it would be unreasonable to order the implementation of measures necessary for prevention, etc. as specified in Article 112 of the Act.

The reasons are as follows. We are going to examine this issue from the perspective of requirements theory (making a decision based on whether the requirements have been fulfilled) and the effect theory (making a decision based on whether appropriate measures have been taken for restoration) respectively.

(2) Requirements theory --- regarding whether the requirements have been fulfilled (whether the replacement of the head part of the statue constitutes infringement of the right to maintain integrity specified in Article 20 of the Act or an act that may be deemed to constitute infringement of the moral rights of author specified in Article 113,

paragraph (6) of the Act, or falls under Article 60 of the Act)

A. Whether any modification has been made or not

The aforementioned undisputed facts, etc. (No. 2, 2. above) indicate that R (the deceased R) is an author of the Original Kannon Statue, which is an artistic work, that R passed away on September 28, 1999, that Defendant Kogenji Temple enshrined the Original Kannon Statue in the Kannon Hall and offered the statue for public viewing, and that the defendants replaced the head part of the Original Kannon Statue at a certain point in time between around 2003 to around 2006 after the death of R.

The Original Kannon Statue is a wood-carved eleven-headed Kannon Bosatsu statue consisting of the head part to which 11 transformed images of Buddha are attached, body part, arm parts, nimbus, and pedestal. The head part to which 11 transformed images of Buddha are attached may be considered to be a creative part of the Original Kannon Statue in the sense that it expresses the thoughts and sentiments of R.

the defendants' act of replacing the head part of the Original Kannon Statue may be considered to be a modification to a creative part of the Original Kannon Statue even if the replacement was made solely for the purpose of modifying the expression in the eyes on the head part of the Original Kannon Statue.

B. Whether the replacement may be considered as a "modification (omitted) against the will of" R as specified in Article 20, paragraph (1) of the Act and as an act "found to not be against the will of" R as specified in the proviso of Article 60 of the Act

The defendants argue that, since R himself was not satisfied with the finished head part of the Original Kannon Statue and was considering re-creating the head part, the defendants' act of replacing the head part of the Original Kannon Statue may not be regarded as a "modification (omitted) against the will of" R (Article 20, paragraph (1) of the Act) and may be considered as an act "found to not be against the will of" R (proviso of Article 60 of the Act), and therefore that the replacement is not prohibited under Article 20, paragraph (1) of the Act.

However, in light of the following circumstances, the act of re-creating the head part of the Kannon Statue after the completion of the Original Kannon Statue should be presumed to be a "modification (omitted) against the will of" R as specified in Article 20, paragraph (1) of the Act and should not be considered as an act "found to not be against the will of" R as specified in Article 60 of the Act.

The statements of Defendant Y contain a statement that, upon completion of the rough carving of the head part of the statue, when R asked the former chief priest to check the head part, R said to the former chief priest that "if you don't like it, I'll make it over." Also, the statements of the representative of the Defendant Kogenji Temple

(Priest A) contain a statement, regarding the roughly-carved head part, stating that when the former chief priest and Priest A visited the Studio on June 14, 1987, "I remember that R was saying in a thick voice, 'What do you think? If you do not like it, should I make it over?'" and also contains a statement, regarding how R felt about the completed head part, stating that "I think R was not satisfied with the head part because he said, 'I'll make it over.'"

On the other hand, [i] while R presented the head part including the transformed images of Buddha for one week from August 23, 1988, in the 35th Buddhism Art Sculpture Exhibition held in the Nihonbashi Mitsukoshi Department Store (1., (2), C., (H) above), if R was not satisfied with the head part, which is a work that R himself had produced as a Buddhist statue sculptor, or if R was planning to remake, R would have naturally refrained from presenting the head part in the Buddhism Art Sculpture Exhibition, [ii] in a ceremony to consecrate the Original Kannon Statue by inserting eyes, which was held in May 18, 1993, R gave a speech by saying that, "(omitted) I did my best. The statue has come out all right." (Exhibit Ko No. 71), [iii] according to the aforementioned statements of Defendant Y and the representative of Defendant Kogenji Temple, R made a comment regarding the roughly-carved head part that "I'll make it over" or "If you do not like it, should I make it over?" However, since these comments were made in the middle of the production of the Original Kannon Statue and may not be considered to indicate that R had an intention to re-create the head part of the Original Kannon Statue after the completion, and [iv] there is no evidence suggesting that R showed his intention to re-create the head part of the Original Kannon Statue during the period from May 18, 1993, on which the aforementioned ceremony to consecrate the newly-made Buddhist statue was held, until September 28, 1999, on which R passed away. In light of these facts, the aforementioned statements of Defendant Y and the representative of Defendant Kogenji Temple may not be presumed to indicate that R had a strong determination to re-create the head part of the Original Kannon Statue after the completion thereof. There is no other evidence to prove such determination.

Therefore, apart from what R thought about the Original Kannon Statue, it is reasonable to presume that the replacement of the head part of the Original Kannon Statue was a "modification (omitted) against the will of" R as specified in Article 20, paragraph (1) of the Act and should not be considered as an act "found to not be against the will of" R as specified in Article 60 of the Act. Thus, none of the aforementioned claims made by the defendants about this point is acceptable.

C. Whether the replacement may be regarded as a "modification that is considered

unavoidable" (Article 20, paragraph (2), item (iv) of the Act)

The defendants argue that their act of replacing the head part of the Original Kannon Statue may be regarded as a "modification that is considered unavoidable" (Article 20, paragraph (2), item (iv) of the Act).

It is true that, according to the facts found in 1. above, the following circumstances may be recognized: [i] When people praying looked up at the Original Kannon Statue enshrined in the Kannon Hall, they were unable to make direct eye contact with the statue. Although R made a repair by carving the surface of the eyes of the Original Kannon Statue so that the statue appeared to be looking downward, the statue ended up not having half-closed eyes, which express the tender mercy of the statue. On the contrary, the statue had wide open eyes that look surprised or to be glaring from the viewpoint of the worshipers looking up at the Original Kannon Statue. [ii] A Kannon statue is an object of worship. Its facial expression has a significant meaning for prayers as an object of worship. However, in the case of the Original Kannon Statue, some of the worshipers and people praying complained that the facial expression of the Original Kannon Statue made them feel uneasy or requested that some measures be taken to modify the facial expression of the statue so that it would express tender mercy. [iii] In around 1994, Defendant Kogenji Temple placed an order with R for a repair of the eyes of the Original Kannon Statue. Although the Plaintiff tried to modify the expression in the eyes of the statue, it was impossible to modify either the look in the eyes or the facial appearance of the Original Kannon Statue. [iv] The current chief priest of Defendant Kogenji Temple, Priest A, found it necessary to modify the facial expression of the Original Kannon Statue in consideration of the religious devotion of the worshipers and people praying. [v] After the death of R, in around 2003, Priest A consulted Defendant Y. Having received advice that there were several methods to modify the facial expression of the Original Kannon Statue such as "re-carving only the eyes" or "re-carving the front side of the face" and that, since those methods could fail, it would be better to re-create the entire head part of the statue, Priest A decided to have the head part re-created. [vi] When Priest A notified the Plaintiff of his intention to re-create the head part of the Original Kannon Statue, the Plaintiff refused the idea of re-creating the head part, and [vii] Priest A placed an order with Defendant Y for the production of a new head part in order to modify the look in the eyes and the facial expression of the Original Kannon Statue. In this way Priest A replaced the head part of the Original Kannon Statue.

In light of these circumstances, it may be considered reasonable for the defendants to have produced the new head part of the Original Kannon Statue and replaced the old

head part with the new one.

However, even if Defendant Kogenji Temple found it desirable to modify the Kannon Statue in such a way that the statue has half-closed eyes that appear to be looking downward and has a facial expression of tender mercy as an object of worship, as a means to achieve such objective, the replacement of the head part of the Kannon statue was not the only method available. For example, Defendant Kogenji Temple could have chosen to re-create the entirety of the Kannon statue. The evidence submitted in this case may not be necessarily considered to have proven, in detail, that, in comparison with such alternative method, the method of replacing the head part of the Original Kannon Statue, which was actually adopted by the defendants, was the only, inevitable choice. Therefore, the defendants' act of replacing the head part of the Original Kannon Statue for the purpose of modifying the expression in the eyes of the Kannon statue so that the statue has a facial appearance of tender mercy may not be regarded as a "modification that is considered unavoidable" as specified in Article 20, paragraph (2), item (iv) of the Act.

Therefore, the defendants' claim is groundless.

D. Whether the replacement may be regarded as an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author" as specified in Article 113, paragraph (6) of the Act (act that may be deemed to constitute infringement of the moral rights of author)

The defendants' act of replacing the head part of the Original Kannon Statue may be regarded as an act that affects the objective social evaluation of R based on a comprehensive evaluation of the facts that, in the ceremony to consecrate the newly-made Buddhist statue held in May 18, 1993, R was introduced as the producer of the Original Kannon Statue and he bowed his head in front of other attendants (Exhibit Ko No. 71) and that, since Shukyo Kougei Shimbun (religious art newspaper) dated June 15, 1995, carried an article under the titled "Buddhist statue sculptor, Mr. R," introducing R as a producer of the Original Kannon Statue, and showed a photograph of the Original Kannon Statue under the title "Tokyo Komagome Kogenji Temple Great Kannon (R)" (1., (5), B. above), it may be presumed that, even as of the date of the conclusion of oral argument (December 21, 2009), which was more than ten years after the death of R on September 28, 1999, R was still known as a Buddhist statue sculptor who produced the Komagome Great Kannon among the supporters and believers of the Kogenji Temple and people involved in Buddhist statue sculpturing such as Buddhist statue sculptors.

Thus, the defendants' act of replacing the head part of the Original Kannon Statue

may be regarded as an "act of exploitation of a work in a manner prejudicial to the honor or reputation of the author (if the author R were still alive)" as specified in Article 113, paragraph (6) of the Act.

(3) Effect theory --- the measures to restore the honor and reputation of the author as specified in Article 115 of the Act, etc., the measures to stop infringement as specified in Article 112 of the Act

As described above, the defendants' act of replacing the head part of the Original Kannon Statue would constitute infringement of the right to maintain integrity if the author R were still alive and should be regarded as an act that may be deemed to constitute infringement of the moral rights of author specified in Article 113, paragraph (6) of the Act. R had neither spouse nor children, and his father T and mother L had passed away before the death of R. The Plaintiff is a younger brother of R (undisputed). Therefore, as a surviving family member of R, the Plaintiff is entitled to demand appropriate measures specified in Article 115 and Article 112 of the Act under Article 116, paragraph (1) of the Act. In the following paragraphs, we are going to examine the appropriate measures, etc. that the Plaintiff may request the defendants to take under Article 115 and Article 112 of the Act.

A. Measures, etc. to restore the honor and reputation of the author specified in Article 115 of the Act

(A) As appropriate measures specified in Article 115 of the Act, the Plaintiff demanded against Defendant Kogenji Temple measures to restore the head part of the statue to its original state as of the time when the Original Kannon Statue was produced, an injunction against the offering of the statue for public viewing, and also demanded against the defendants an apology advertisement, etc.

However, based on a comprehensive evaluation of the following circumstances, it may be interpreted that [i] if an objective description of the background circumstances is notified through an apology advertisement (including a collection advertisement) as demanded by the Plaintiff, it would suffice to restore the honor and reputation of R, and [ii] the measures such as the restoration of the head part to its original state as of the time when the Original Kannon Statue was produced, the publication of an apology advertisement, or an injunction against the offering of the statue for public viewing may not be considered to be appropriate measures to restore the honor and reputation of R.

As found by the court above, the measures to restore the statue to its original state may not be considered to be appropriate measures based on a comprehensive evaluation of the following circumstances: [i] The former chief priest of Defendant Kogenji Temple placed an order with R for production of the Original Kannon Statue for the

purpose of reconstructing the "former Komagome Great Kannon," which was destroyed by fire during the war, and creating a Kannon statue, i.e., a Buddhist statue suitable for an object of worship. [ii] However, after the Original Kannon Statue was produced by R and was enshrined in the Kannon Hall, when worshipers looked up at the statue, the eyes of the statue looked surprised or to be glaring. [iii] The current chief priest of Defendant Kogenji Temple, Priest A, felt uneasy about such facial expression and hoped to modify the expression of the Original Kannon Statue, and placed an order with R for a repair of the eyes of the Original Kannon Statue. [iv] While the Plaintiff tried to repair the look in the eyes of the Original Kannon Statue, he was unable to modify the facial expression of the Original Kannon Statue, [v] When Priest A of Defendant Kogenji Temple consulted Defendant Y about a modification of the expression in the eyes of the Original Kannon Statue, Defendant Y advised that the idea of modifying only the front part of the head part and leaving the remaining part intact would have a higher chance of failure. [vi] Based on such advice, Priest A asked Defendant Y to create the new head part and replace the old head part with the new one. Defendant Y re-created the Kannon Statue in accordance with such instruction. [vii] Defendant Y, who was a pupil of R, had long been engaged in the production of Buddhist statues under the supervision of R. Defendant Y had been actively involved in all of the stages of the production of the Original Kannon Statue from the beginning up to the completion of the woodcarving process (excluding the lacquering and gilding processes) in order to assist and support the creative activities of R. [viii] Since the head part detached from the Original Kannon Statue (the head part prior to the replacement) has been stored in the Kannon Hall without any modification, it is possible for third parties to appreciate the figure of the former head part. [ix] If the court ordered Defendant Kogenji Temple to restore the head part of the Kannon Statue to its original state as of the time when the Original Kannon Statue was produced, Defendant Kogenji Temple would only temporarily take measures to restore the head part to its original state, and would shortly thereafter incinerate the entirety of the Original Kannon Statue, which is a ritual commonly called "Sacred Fire." Consequently, the purpose of restoring the honor and reputation, etc. of R would not be sufficiently achieved.

(B) In short, while the defendants' act of replacing the head part of the Kannon Statue may be actually considered to be an act of infringing the moral rights of author, if the author were still alive, it would be inappropriate for the court to order the restoration of the head part to its original state in this case in consideration of the purpose of production of the Original Kannon Statue, the motive of replacing the head part, the background of the producer of the head part for replacement, and the role of the

Buddhist statue as an object of worship, such as that, since Defendant Kogenji Temple placed an order with R for the production of the Original Kannon Statue for the purpose of creating an object of worship, that the act of replacing the head part may be regarded as a part of repair necessary to achieve such original purpose of production, and that Defendant Y, who carried out the replacement, had consistently been involved in the production of the Original Kannon Statue under the supervision of R.

According to the facts described above, it should be interpreted that the publication and notification of the background facts in the form of an advertisement would suffice in order to restore the honor and reputation of R. It would be appropriate to publish an advertisement with the content shown in I of the Advertisement List attached to this judgment in the newspaper shown in II of said Advertisement List. Also, it would be inappropriate to seek an injunction against the offering of the statue for public viewing under Article 115 of the Act.

B. Claim for an injunction specified in Article 112, paragraphs (1) and (2) of the Act

The Plaintiff demanded cessation or prevention of the act of infringing the moral rights of author under Article 112, paragraph (1) of the Act and measures necessary to stop or prevent the infringement of the moral rights of author under Article 112, paragraph (2) of the Act. However, even if the Plaintiff argues that Article 112, paragraphs (1) and (2) of the Act provide sufficient grounds, it may not be considered to be necessary measures to seek an injunction against offering of the Kannon Statue for public viewing and restoration of the statue to its original state for the same reasons as those stated in A. above.

5. Whether the Plaintiff is entitled to seek an injunction against offering of the statue for public viewing on the grounds of the infringement of the right of exhibition inherited from R (Article 112, paragraph (1) of the Act) and the restoration of the statue to its original state (Article 112, paragraph (2) of the Act) (Issue 9 --- Claims related to R)

The Plaintiff argues that, based on the presumption that he inherited the exclusive rights that R used to own related to the right of publicly exhibiting original works, the Plaintiff has the right to seek an injunction against the offering of the Kannon Statue for public viewing because the Kannon Statue is a derivative work of the Original Kannon Statue.

However, this claim of the Plaintiff is unacceptable for the following reasons.

Having received from Defendant Kogenji Temple an order for the production of a Kannon statue and accepting the order, R produced the Original Kannon Statue. In general, a Kannon statue, by its nature, is offered to worshipers as an object of worship. In light of such original purpose of a Kannon statue, it would be natural to consider that

R produced the Kannon statue after agreeing to the general, comprehensive, and perpetual exhibition of the statue. Therefore, it is reasonable to interpret that the Plaintiff is not entitled to seek an injunction against the offering of the statue for public viewing and the restoration of the statue to its original state based on the right of exhibition that the Plaintiff alleges to have inherited from R.

The Kannon Statue was created by replacing the head part of the Original Kannon Statue in order to modify the expression in the eyes of the Original Kannon Statue. Although the Kannon Statue is not exactly the Original Kannon Statue, based on a comprehensive evaluation of the background circumstances, etc. described in 4. above, it would not make any difference to the fact that the Plaintiff is not entitled to seek an injunction against the exhibition of the Kannon Statue based on the right of exhibition owned by the Plaintiff.

6. Claim to seek damages based on the infringement of the right of exhibition owned by the Plaintiff, claim to seek damages based on the infringement of the right of exhibition inherited from R, claim to seek damages based on the infringement of the deep affection and sense of honor as a surviving family member (Issue 10)

As described in 5. above, it should be interpreted that Defendant Kogenji Temple is entitled to exhibit the Kannon Statue. Based on this interpretation, the Plaintiff does not have the right to seek an injunction against Defendant Kogenji Temple's act of exhibiting the Kannon Statue. Therefore, the Plaintiff may not be considered to have suffered any monetary damage due to the exhibition of the Kannon Statue by Defendant Kogenji Temple. The Plaintiff's claim regarding this point is groundless.

No. 5 Conclusion

As described above, there are reasonable grounds for the Plaintiff's claim against the defendants as far as the claim for publication of an advertisement with the content shown in I of the Advertisement List attached to this judgment in a manner shown in II. of said List is concerned. Any other claims are groundless. Any other arguments of the Plaintiff are groundless, also. Since a declaration of provisional execution is not appropriate, it is not made by this court.

Therefore, the judgment shall be rendered in the form of the main text.

Third Division of the Intellectual Property High Court

Presiding Judge: IIMURA Toshiaki

Judge: OSUGA Shigeru

Judge: SAIKI Norio

(Attachment)

List of Works

Buddhist statue: Wood-carved eleven-headed Kannon Bosatsu statue

Location: Kannon Hall, Kogenji Temple

2-38-22, Mukougaoka, Bunkyo-ku, Tokyo

(Attachment)

Apology Advertisement List 1

I. Content of the apology advertisement

Apology Advertisement

The Komagome Great Kannon is a wood-carved eleven-headed Kannon Bosatsu statue enshrined by the Kogenji Temple in the Kannon hall on the premises of the Kogenji Temple in 2-38-22, Mukougaoka, Bunkyo-ku, Tokyo. This Komagome Great Kannon was produced by Mr. X in collaboration with Mr. R, etc. upon commission by the Kogenji Temple. The Kogenji Temple commissioned Y for the replacement of the head part of the statue without permission from Mr. X. After Y carried out the replacement of the head part, the Kogenji Temple continued offering the statue with the replaced head for public viewing. By conducting these acts, the Kogenji Temple and Y jointly infringed the right to maintain integrity held by Mr. X. The Kogenji Temple and Y would like to sincerely apologize for having caused great trouble to Mr. X.

(Date)

Representative Officer A
Kogenji Temple
2-38-22, Mukougaoka, Bunkyo-ku,
Tokyo

Y
2-40-15, Sannou, Sakura City, Chiba

Mr. X
8-13-16, Togashira, Toride City, Ibaraki

II. Manner of publishing the apology advertisement

1. Mainichi Newspapers

- (1) Space for publication: 2-column × 4.0cm
- (2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom and 10 point for any other part.

2. Chugai Nippou

- (1) Space for publication: 2-column × 4.0cm

(2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom and 10 point for any other part.

(Attachment)

Apology Advertisement List 2

I. Content of the apology advertisement

Apology Advertisement

The Komagome Great Kannon is a wood-carved eleven-headed Kannon Bosatsu statue enshrined by the Kogenji Temple in the Kannon hall on the premises of the Kogenji Temple in 2-38-22, Mukougaoka, Bunkyo-ku, Tokyo. This Komagome Great Kannon was produced by deceased Mr. T and deceased Mr. R, in collaboration with Mr. X upon commission by the Kogenji Temple. The Kogenji Temple commissioned Y for the replacement of the head part of the statue. After Y carried out the replacement of the head part based on this commission, the Kogenji Temple continued offering the Kannon statue with the replaced head for public viewing. By conducting these acts, the Kogenji Temple and Y jointly infringed the right to maintain integrity held by deceased Mr. T and deceased Mr. R if they were still alive. Moreover, the Kogenji Temple and Y have damaged the honor and reputation of deceased Mr. T and deceased Mr. R. The Kogenji Temple and Y would like to sincerely apologize for having caused such troubles.

(Date)

Representative Officer A
Kogenji Temple
2-38-22, Mukougaoka, Bunkyo-ku,
Tokyo

Y
2-40-15, Sannou, Sakura City, Chiba

II. Manner of publishing the apology advertisement

1. Mainichi Newspapers

- (1) Space for publication: 2-column×4.0cm
- (2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom and 10 point for any other part.

2. Chugai Nippou

- (1) Space for publication: 2-column×4.0cm
- (2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom

and 10 point for any other part.

(Attachment)

Advertisement List

I. Content of the advertisement

Advertisement

The Komagome Great Kannon is a wood-carved eleven-headed Kannon Bosatsu statue enshrined by the Kogenji Temple in the Kannon hall on the premises of the Kogenji Temple in 2-38-22, Mukougaoka, Bunkyo-ku, Tokyo. This Komagome Great Kannon was produced by deceased Mr. R in collaboration with other sculptors upon commission by the Kogenji Temple. Subsequently, the Kogenji Temple placed an order with Y for the recreation of a head part for the statue. Based on this order, Y produced a new head part. The Kogenji Temple enshrined the Kannon statue with the newly produced head part in the Kannon hall and has offered it for viewing by worshipers. The head part produced by deceased Mr. R was stored in the Kannon hall as well. The Kogenji Temple and Y would like to publish this notice in order to take an appropriate measure to restore the honor and reputation of deceased Mr. R.

(Date)

Representative Officer A
Kogenji Temple
2-38-22, Mukougaoka, Bunkyo-ku,
Tokyo

Y
2-40-15, Sannou, Sakura City, Chiba

II. Manner of publishing the advertisement

1. Mainichi Newspapers

- (1) Space for publication: 2-column \times 4.0cm
- (2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom and 10 point for any other part.

2. Chugai Nippou

- (1) Space for publication: 2-column \times 4.0cm
- (2) Font: 12 point (Gothic) for the title and the names of the defendants at the bottom and 10 point for any other part.

(Attachment)

Photograph List

