

Date	July 19, 2016	Court	Tokyo District Court, 47th Civil Division
Case number	2015 (Wa) 33398		
<p>– A case in which the court examined the full facial mask sheets (so-called cosmetic facemasks) manufactured by the plaintiff and the defendant and found that the defendant's act does not constitute an act of unfair competition specified in Article 2, paragraph (1), items (i) and (iii) of the Unfair Competition Prevention Act.</p>			

References:

Numbers of related rights, etc.:

Summary of the Judgment

In this case, the plaintiff alleged against the defendant that [i] since the configuration of the cosmetic facemask sold by the defendant (the defendant's goods) is similar to the configuration of the cosmetic facemask sold by the plaintiff (the plaintiff's goods), which is widely known as the plaintiff's indication of goods, etc., the sale of the defendant's goods would cause confusion with the plaintiff's goods and constitutes an act of unfair competition specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, and that [ii] the sale of the defendant's goods, which were produced by copying the configuration of the plaintiff's goods, constitutes an act of unfair competition specified in item (iii) of said paragraph. The plaintiff sought an injunction against the sale of the defendant's goods, etc. and also demanded destruction thereof under Article 3, paragraphs (1) and (2) of said Act and payment of damages under Article 4 of said Act.

In this judgment, the court examined the plaintiff's claim specified in [i] and found that, while the configuration of goods itself could be considered to be an "indication of goods, etc." only if the configuration of the goods has clearly distinctive characteristics (distinctiveness) that are different from those of other goods of the same kind, the configuration of the plaintiff's goods is commonplace and cannot be objectively considered to have clearly distinctive characteristics that are different from those of other goods of the same kind. Based on this finding, the court determined that the defendant's act cannot be considered to constitute an act of unfair competition specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act. Also, the court examined the plaintiff's claim specified in [ii] and found that, since the identical or similar features of the configurations of the plaintiff's goods and the defendant's goods are commonplace among other goods of the same kind, the defendant's goods cannot be found to be identical with the plaintiff's goods in practice in terms of overall configuration. On these grounds, the court determined that the

defendant's act does not constitute "imitation" and denied the occurrence of an act of unfair competition specified in item (iii) of said paragraph, and dismissed all of the plaintiff's claims.