Date	July 4, 2008	Court	Tokyo District Court, 47th Civil Division
Case number	2007 (Wa) 19275		

– A case in which the court found that the defendant's act of purchasing stocks of the defendant's goods, which were produced by imitating the configuration of the plaintiffs' goods, and selling such defendant's goods falls under the case referred to in Article 19, paragraph (1), item (v), (b) of the Unfair Competition Prevention Act on the grounds that, as of the time when the defendant received said stocks, the defendant was in good faith without gross negligence about the fact that the defendant's goods were produced by imitating the configuration of the plaintiffs' goods, and accordingly the court denied the application of Article 2, paragraph (1), item (iii) of said Act to the defendant's act.

In this case, the plaintiffs alleged that the defendant's goods (a small case built into a stuffed poodle) purchased and sold by the defendant were produced by imitating the configuration of the plaintiffs' goods manufactured by Plaintiff 1 and sold by Plaintiff 2 and the defendant's act falls under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act, and that the defendant's act constitutes infringement of the copyright of Plaintiff 1 and the license of Plaintiff 2. Based on such allegation, the plaintiff demanded the payment of damages, etc. for an act of tort.

In this judgment, the court found as follows. It may be presumed [i] that the defendant's goods are identical to the plaintiffs' goods in that both goods consist of a combination of a stuffed animal and a small case; [ii] that, since both goods share many distinctive shapes, the defendant's goods may be considered to be identical with the plaintiffs' goods in substance in terms of configuration; and [iii] that, since there was only a small time lag between the launch of the defendant's goods and the posting of a photograph of the plaintiffs' goods on the plaintiffs' website, the defendant's goods may be presumed to have been manufactured by imitating the plaintiffs' goods. The configuration of the plaintiffs' goods may not be considered to be essential for the performance of the functions of the goods. When the defendant purchases stocks of goods, the buyer in charge of purchasing stocks of goods chooses a proposal for specific goods from among many proposals submitted by suppliers and decides the sales volume, price, etc. thereof. Since the department in charge of purchasing stocks of the defendant's goods handles about 120,000 items of goods every year, it may be presumed that an extremely large number of proposals are submitted from suppliers to the defendant. Therefore, when purchasing stocks of the defendant's goods, the defendant is considered to have merely chosen a proposal for the defendant's goods and decided the sales volume, price, etc. without getting involved in the planning and production stages

of the defendant's goods. It must be extremely difficult to check the development process of such a large number of items of goods as mentioned above and examine whether any of the items are substantially identical to another person's goods in terms of configuration. In consideration of the facts that the sales of the plaintiffs' goods were only about 190,000 yen in total and the sales volume thereof was 330 units in total and that the scale of the advertisement of the plaintiffs' goods was limited to the posting of photographs on the webpage and product catalogs of Plaintiff 2, the plaintiffs' goods may not be considered to be widely known to the public. Given this, even if the defendant had exercised the reasonable standard of care that is required in the course of such transactions, the defendant could not have recognized the existence of the plaintiffs' goods and the fact that the defendant's goods were produced by imitating the configuration of the plaintiffs' goods. At the time of purchasing stocks of the defendant's goods, the defendant was not aware of the fact that the defendant's goods were produced by imitating the configuration of the plaintiffs' goods and there was thus no negligence on the part of the defendant in not having been aware of said fact. On these grounds, the court ruled that the defendant's act falls under the case referred to in Article 19, paragraph (1), item (v), (b) of the Unfair Competition Prevention Act and therefore that Article 2, paragraph (1), item (iii) of said Act shall not apply to said act. Regarding the allegation about a copyright, the court dismissed the plaintiffs' claims by holding that, unlike works of pure art and works of crafts of artistic value, the plaintiffs' goods may not be considered to have artistic quality and that the plaintiff's goods may not be considered to be copyrightable works to be protected under the Copyright Act.