

Date	June 9, 2009	Court	Osaka District Court, 21st Civil Division
Case number	2007 (Wa) 8262		
<p>1. The court dismissed the plaintiff's claim to seek an injunction against the assignment, etc. of the defendants' goods and also seek damages, which was filed by alleging that the defendants' goods imitate the configurations of the plaintiff's goods.</p> <p>2. The court dismissed the plaintiff's claim to seek an injunction against the assignment, etc. of the defendants' goods and also seek damages, which was filed by alleging that the assignment, etc. of the defendants' goods constitutes a tort under Article 709 of the Civil Code.</p>			

The plaintiff sells cosmetics for atopic skin under the name of "at system," which consists of nine items including those for "cleansing" and "washing" (the "plaintiff's goods"). The defendants sell cosmetics for atopic skin under the name of "AT Produce," consisting of the same items as those of the plaintiff's goods (the "defendants' goods"). In this case: [i] as a principal claim, the plaintiff alleged against the defendants that the defendants' goods imitate the configurations, etc. of the plaintiff's goods that were designed and developed by the plaintiff and the defendants' act of selling the defendants' goods constitutes the act of unfair competition under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act (act of imitating the configuration of another person's goods), and based on this allegation, the plaintiff sought an injunction against the assignment, etc. of the defendants' goods and demanded the disposal thereof in accordance with Article 3 of said Act and also claimed damages (as presumed under Article 5, paragraph (2) of said Act) in accordance with Article 4 of said Act; and [ii] as an alternative claim, the plaintiff alleged against the defendants that the defendants' act of selling the defendants' goods that were similar to the plaintiff's goods constitutes a tort under the Civil Code, and in accordance with Articles 709 and 719 of said Code, the plaintiff sought an injunction against the sale, etc. of the defendants' goods, demanded the disposal thereof, and claimed damages. In response, the defendants contended that the bottles used for the plaintiff's goods are ready-made goods manufactured by a bottle manufacturer and they were not developed by the plaintiff, and thus the configurations of these bottles cannot be regarded as the "configuration of another person's goods." The defendants also disputed the allegations that the configurations of the defendants' goods were created "based on" the configurations of the plaintiff's goods and that they are "practically identical" to the configurations of the plaintiff's goods.

As for the principal claim, the court found as follows. Even though the shape of each container of the plaintiff's goods was created using the mold that had been held by

the bottle manufacturer, each of the configurations of the plaintiff's goods does not consist only of the shape of the container but is also composed of the pattern, color, gloss and texture combined with such shape. These elements of the configuration of each container of the plaintiff's goods were created through the process in which the manager in charge of the plaintiff consulted with the bottle manufacturer and commissioned a design company to create the design. Based on these findings, the court determined that the configurations of the plaintiff's goods, in whole, were developed and commercialized by the plaintiff by putting funds and labor in the development process, and therefore they can be regarded as the "configuration of another person's goods." According to this determination, the court compared the features of the containers of the plaintiff's goods other than the configuration and size of each container, namely, the color, gloss and texture of the container as well as the eye-catching color of the figure indicated on the container, and the arrangements of the characters "at" and other sequences of characters, with such features of the containers of the defendants' goods. As a result, the court determined that the configurations of the defendants' goods cannot be considered to be practically identical to the configurations of the plaintiff's goods, and dismissed the plaintiff's claim under the Unfair Competition Prevention Act.

As for the alternative claim, while the court found that the configurations of the defendants' goods were created based on the configurations of the plaintiff's goods, it took into consideration the circumstances that led the defendants' goods to be put on sale, as well as the facts that the configurations of the defendants' goods cannot be considered to be practically identical to the configurations of the plaintiff's goods and that the defendants' goods had been sold only in a limited volume, and consequently, the court determined that the sale, etc. of the defendants' goods cannot be considered to have gone so far beyond the bounds of fair, free competition in commercial transactions, and that therefore it cannot be considered to sufficiently constitute a tort against the plaintiff. In conclusion, the court also dismissed the plaintiff's claim of a tort.