

Judgments of Intellectual Property High Court, Third Division

Date of the Judgment: 2005.8.10

Case Number: 2005 (Ne)No.10029, 2005 (Ne)No.10034

Title (Case):

A case wherein the court rejected the act of indicating “requires no waxing at all for five years” and “shine guaranteed to last five years” in the advertisements for selling an automobile coating agent, as an act of misrepresentation conducted in a manner that is likely to mislead the public as to the quality and other aspects of the goods, as provided for in Article 2(1) (xiii) of the Unfair Competition Prevention Act

Reference: Article 2(1) (xiii) of the Unfair Competition Prevention Act

Summary of the Judgment:

Y, a company engaged in selling automobile parts and supplies, was importing an automobile coating agent (hereinafter referred to as “Product Y”) and selling it to automobile dealers in Japan. Y included indications such as “requires no waxing at all for five years” and “shine guaranteed to last five years” (hereinafter referred to as the “Indications”) in the catalogs and pamphlets of Product Y and used them in its selling activities.

X, a company engaged in manufacturing and selling automobile waxes, sought suspension of use of the said Indications and payment of damages, alleging that the Indications misled the public as to the quality and the content of Product Y and that the act of using the Indications in advertisements constituted an act of unfair competition as provided for in Article 2(1) (xiii) of the Unfair Competition Prevention Act.

The judgment in the first instance found Product Y to lack the effect of maintaining the gloss level of the coating of a brand-new car for five years by partially adopting the evidence produced by X, including test results (weather resistance tests), and partially upheld X’ s claims holding that the Indications ran the risk of misleading the public as to the quality and content of the defendant’ s product.

This case is an appeal by both parties following this judgment of the first instance.

In the appeal hearing, evidence was examined that was newly produced by both parties including various test results, in addition to the evidence produced in the first instance. The court found it unreasonable to determine definitively that Product Y lacked the effect of maintaining the gloss level of the coating of a brand-new car for five years based on the results of the weather resistance tests referred to by X, given that: (i) weather resistance tests are easily affected by the testing method, testing conditions, and

alteration of the test item; (ii) although there are test results adopted in the first-instance judgment indicating unfavorable results for Y, there are also test results showing a high gloss level retention rate of vehicles applying Product Y in this case; and (iii) there are additionally measurement results indicating that multiple vehicles actually applying Product Y maintained an extremely high gloss level on average five years after application. The court further stated that the determination of whether or not the “shine of a brand-new car” mentioned in the Indications has been maintained depends largely on the subjective view of the people who see it and could vary among people to a certain extent, and taking this into account, the indication that the product “maintains the gloss level of the coating of a brand-new car for five years” was found not to be false or misleading the public as to the quality and content of the defendant’s product. Consequently, the part of the original judgment that Y lost was overturned and X’s claims were dismissed.

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