

Date	July 20, 2011	Court	Tokyo District Court, 29th Civil Division
Case number	2009 (Wa) 40693		

1. Regarding the issue of the indications of goods or business of the goods in question, the court found that it was the defendant who placed the goods carrying the indications of the goods in question on the market on its own discretion and responsibility and who was recognized among consumers as the entity enjoying the reputation embodied in said indications of the goods, and thereby concluded that the defendant's act does not fall under Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.

2. The court found that some of the goods in question were jointly developed by plaintiff and the defendant and were placed in the market by the defendant and therefore that said goods may not be considered to be "another person's goods" from the perspective of either party and that it was the defendant who developed and commercialized the rest of the goods and placed them on the market and thereby concluded that the defendant's act does not fall under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.

The plaintiff alleged that, while the indications of goods or business (the names and configurations of goods) (the "Indications of Goods") of the goods in question (the "Goods") were well known as the indications of goods or business of the plaintiff, the defendant sold the defendant's goods carrying an indication of goods or business that is similar to the Indications of Goods and that such act of the defendant falls under Article 2, paragraph (1), items (i) and (iii) of the Unfair Competition Prevention Act. The plaintiff demanded against the defendant an injunction under Article 3, paragraph (1) of said Act and damages, etc. under Article 4 of said Act.

In response, the defendant alleged that the Goods are the defendant's goods and that the indication of goods or business affixed to the defendant's goods is the defendant's indication of goods or business, which indicates that the goods carrying said indication are the defendant's goods.

In this judgment, the court found that Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act prohibits, as an act of unfair competition, any act of confusing customers by using an indication that is identical or similar to another person's well-known indication and attracting customers by free-riding on another person's reputation embodied in said indication and thereby tries to maintain and establish a fair competitive environment. Furthermore, the court found it reasonable to interpret that the term "another person" used in said item means a person who may be

recognized among consumers as the entity enjoying the reputation embodied in the indication as a result of placing goods carrying said indications on the market or conducting business activities, etc. on its own discretion and responsibility. The court also found that it is reasonable to recognize that it was the defendant who placed the Goods carrying the Indications of Goods on the market on its own discretion and responsibility and who was recognized among consumers as the entity enjoying the reputation embodied in the Indications of Goods. In conclusion, the court found that the act of selling the defendant's goods does not fall under said item.

Moreover, the court found that Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act prohibits, as an act of unfair competition, any act of imitating the configuration of any goods developed and commercialized by another person who made monetary and labor investments in the course of the development and commercialization activities, and placing those imitation goods on the market as its own goods and attracting customers by free-riding on the achievement of such 'another person' who entered the market earlier and thereby tries to protect the interests of such 'another person'. On these grounds, the court found it reasonable to interpret the term "another person" used in said item as a person who had developed and commercialized goods and placed them in the market and subsequently suffered imitation of the configuration of said goods. Moreover, the court found that some of the Goods may be found to have been jointly developed by the plaintiff and the defendant and have been placed in the market by the defendant, and concluded that, under these circumstances, while both parties are entitled to the protection specified in said item against a third party's act of imitation, the jointly developed goods may not be considered to be "another person's goods" from the perspective of either party and therefore that the plaintiff may not make any claim against the defendant under said item. Regarding the rest of the Goods, the court found that it was the defendant who developed and commercialized those goods and placed them on the market and that the defendant's act of selling the defendant's goods does not fall under said item.