

Date	October 3, 2011	Court	Osaka District Court, 26th Civil Division
Case number	2010 (Wa) 9684		
– A case in which the court ruled that the configuration of a "strainer" manufactured and sold by the plaintiff does not fall under a configuration that is indispensable for ensuring the function of the goods.			

The plaintiff, which manufactures and sells a flexible and transformable "strainer," alleged that the defendants' act of importing and selling goods of the same sort (the "defendants' goods") falls under the act of unfair competition set forth in Article 2, paragraph (1), item (i) or (iii) of the Unfair Competition Prevention Act. Based on this allegation, the plaintiff filed this action to seek an injunction against the sale, etc. of the defendants' goods and compensation for damages, etc.

The major issues are [i] whether the configuration of the plaintiff's goods falls under an indication of goods set forth in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, [ii] whether the plaintiff becomes the subject of protection under item (iii) of said paragraph, [iii] whether the defendants' goods are those that imitate the configuration of the plaintiff's goods, [iv] whether the configuration of the plaintiff's goods falls under a configuration that is indispensable for ensuring the function of the goods, [v] whether the proviso to Article 5, paragraph (1) of said Act is applicable, and [vi] whether the plaintiff's claims for an injunction and destruction are acceptable.

In this judgment, regarding issue [i], the court ruled that the configuration of the plaintiff's goods does not fall under an indication of goods or business set forth in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act as the feature of the plaintiff's goods in the configuration is the function of the plaintiff's goods itself or the configuration that derives from a structure necessary for achieving the function. Regarding issue [ii], the court ruled that the holder of the exclusive right to sell the goods (plaintiff) also becomes the subject of protection under item (iii) of said paragraph. Regarding issue [iii], the court ruled that the configuration of the plaintiff's goods and that of the defendants' goods are substantially identical with each other. Regarding issue [iv], the court ruled as follows: The configuration of the plaintiff's goods is not a configuration that is indispensable for ensuring the function of the goods because there are no prior goods that have the same configuration as the plaintiff's goods and are transformable in the same way as the plaintiff's goods and there are endless options for the configuration of the goods of the same sort. Moreover, regarding issue [v], the court ruled that there were circumstances that would have

prevented the plaintiff from selling a number of articles equivalent to at least one-half of the number transferred, taking into consideration the facts that the number transferred of the defendants' goods is eight times that of the plaintiff's goods and that the retail unit price of the plaintiff's goods is three times that of the defendants' goods. Based on this ruling, the court partially upheld the plaintiff's claim for the payment of damages and dismissed other parts of the claim. Regarding issue [vi], the court found that three years have elapsed since the date on which the plaintiff's goods were first sold, and based on this finding, it dismissed the plaintiff's claims for an injunction and destruction.