

Date	September 20, 2012	Court	Osaka District Court, 26th Civil Division
Case number	2011 (Wa) 12566		
<p>– A case in which, with regard to the defendant's act of selling drugs in packaging to which the characters, "正露丸," "糖衣," and "S," are attached, the court ruled that these characters are not recognized as being used as a successive and integral indication of goods and thereby denied establishment of unfair competition set forth in Article 2, paragraph (1), items (ii) and (i) of the Unfair Competition Prevention Act</p>			

1. Both the plaintiff and the defendant are business operators which manufacture and sell gastrointestinal drugs (the "Drugs") that consist mainly of creosote.

The plaintiff manufactures and sells the Drugs using packaging which includes such indications as "セイロガン糖衣 A" ("Plaintiff's Indications"). The plaintiff asserted that the packaging, etc. of the Drugs sold by the defendant ("Defendant's Indications") are similar to the Plaintiff's Indications and constitute unfair competition set forth in Article 2, paragraph (1), item (ii) or (i) of the Unfair Competition Prevention Act. The plaintiff sought an injunction against the use of the Defendant's Indications and damages, etc.

2. The major issues of this case are (1) whether the Plaintiff's Indications are well-known and famous as indications of the plaintiff's goods, (2) whether the Defendant's Indications are indications of goods that are identical or similar to the Plaintiff's Indications, (3) whether the defendant's act creates confusion with the plaintiff's goods, and (4) the amount of damages incurred by the plaintiff.

3. The court dismissed the plaintiff's claims for the following reasons.

First, with regard to issue (2), the court ruled that the packaging of the plaintiff's goods and that of the defendant's goods are not similar to each other on the following grounds: Although the characters "正露丸," "糖衣," and "S" are attached to the packaging of the defendant's goods, these characters are not recognized as being used as a successive and integral indication of goods; The phrases, "胃腸薬 (gastrointestinal drug)," "第2類医薬品 (Type II drug)," "軟便 (loose passage)," "下痢 (diarrhea)," "食あたり (food poisoning)," and "飲みやすい白い錠剤 (easy-to-swallow white tablets)," and statement of dose, which the plaintiff cites as points of similarity between the packaging of the plaintiff's goods and that of the defendant's goods, are mere indications of the efficacy, intended purpose, and quantity of goods in a common manner; It is indications of "セイロガン糖衣 A" and a mark of a bugle that function to enable consumers to distinguish the plaintiff's goods from another person's goods and the packaging of the defendant's goods does

not include any indication similar thereto.

In addition, the court ruled that Article 19, paragraph (1), item (i) of the Unfair Competition Prevention Act is applicable, as the characters "正露丸" and "糖衣" are mere common names and the packaging of the defendant's goods merely uses these common names, etc. in a common manner.