

Date	April 14, 2015	Court	Intellectual Property High Court, Second Division
Case number	2014 (Ne) 10063		
<p>– A case in which the court examined the case of seeking an injunction against the appellee's act of copyright infringement, etc. and upheld the conclusion of the judgment in prior instance by recognizing [i] the copyrightability of the baby chair (the appellants' product) that the court of prior instance found uncopyrightable and that [ii] the allegedly-infringing baby chair (the appellee's product) may not be considered to be similar to such part of the appellants' product that is found to be copyrightable.</p>			

References: Article 2, paragraph (1), item (i) and paragraph (2), Article 10, paragraph (1), item (iv) of the Copyright Act, Article 2, paragraph (1), item (i) and item (ii) of the Unfair Competition Prevention Act, Article 709 of the Civil Code

Number of related IP right, etc.:

Summary of Judgment

1. Background, etc.

Both of the appellants are Norwegian companies. The appellee is the Japanese stock company established for the purpose of sale, etc. of various nursery items and furniture.

In this case, the appellants alleged that the configuration of the baby chair manufactured and sold by the appellee (the appellee's product) is similar to the configuration of the baby chair manufactured and otherwise handled by the appellants (the appellants' product). On the ground of the aforementioned similarity, the appellants alleged that the appellee's act of manufacturing and selling the appellee's product constitutes [i] an act of infringement of the copyright of Appellant Company P for the appellants' product and the exclusive right to use of Appellant Company Q for said copyright, and [ii] an act of unfair competition specified in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act; and that [iii] even if the appellee's act may not be considered to constitute the aforementioned acts of infringement and unfair competition, the appellee's act constitutes an act of tort specified in Article 709 of the Civil Code. The appellants sought against the appellee [i] an injunction against the manufacturing and sale, etc. of the appellee's product and destruction thereof, [ii] payment of damages, etc., and [iii] publication of an apology advertisement.

The court of prior instance found [i] that the design of the appellants' product is uncopyrightable, [ii] that the appellee's act of manufacturing and selling the appellee's product does not constitute an act of "unfair competition," and [iii] that said appellee's act does not constitute an act of general tort either. In conclusion, the court of prior instance dismissed all of the appellants' claims.

Dissatisfied with the judgment in prior instance, the appellants filed this appeal.

2. Issues

The major issues in this case are [i] whether the appellants' product is copyrightable, [ii] whether an act of infringement has been committed, and [iii] whether the appellee's act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act.

3. Judgment

(1) A. In this judgment, the court held that any work of applied art, such as a baby chair, which is a work of expression created to be used for practical purposes or industrial purposes, shall be protected under the Copyright Act as an "artistic work" (Article 10, paragraph (1), item (iv) of the Copyright Act), just like other types of work of expression, as long as said work fulfills the requirements specified in Article 2, paragraph (1), item (i) of the Copyright Act. The court further held that the phrase "expressed in a creative way" used in Article 2, paragraph (1), item (i) of the Copyright Act means as follows: "The expression in question is not required to be creative in a strict sense, but is required to show certain unique characteristics of the producer. If the expression is ordinary and common place, the expression may not be considered to express any unique characteristics of the producer and therefore may not be considered to be a 'creative' expression."

In this judgment, the court dismissed the appellee's allegation that, from the perspective of pursuing appropriate coordination between the protection under the Copyright Act and the protection under the Design Act, any work of applied art would not be found copyrightable unless, when said work except for its practical functions is observed, said work exhibits aesthetic creativeness that can be appreciated artistically.

B. In this judgment, the court found the appellants' product to be copyrightable by holding that the appellants' product may be considered to be a "creative" expression in view of the fact that said product exhibits the unique characteristics of the producer, namely, the representative of Appellant Company P, in the following respects: [i] the appellants' product has two legs consisting of "a pair of Member A." Both "Member G (seat) and Member F (leg rest) are inserted to and fixed at the groove" formed "on the inner side of Member A" and [ii] Member A is connected only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor, and Member A and Member B are connected at an acute angle of about 66 degrees.

C. In this judgment, the court found that the appellee's product may not be considered to be similar to such part of the appellants' product that may be found to be copyrightable.

Therefore, the appellee's act of manufacturing and selling the appellee's product may be considered to have infringed neither the copyright of Appellant Company P nor the exclusive right to use of Appellant Company Q.

(2) A. In this judgment, the court found that the configuration of goods may be considered to be an "indication of goods or business" specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act only if [i] said configuration has distinctive features that are different from those of other products in the same genre (special distinctiveness) and [ii] said configuration has come to be recognized by consumers as a source identifier of a certain company as a result of long, continuous, exclusive use and active advertisement, etc. by said company (well-knownness).

B. In this judgment, the court found that the appellants' product, as far as the aforementioned features thereof that express the unique characteristics of the producer, namely, the representative of Appellant Company P, are concerned, satisfies the aforementioned two requirements. On these grounds, the court recognized the appellants' product as an "indication of goods or business."

C. In this judgment, the court found that such part of the appellants' product that satisfies the aforementioned requirements may not be considered to be similar to any part of the appellee's product and that the appellee's act may not be considered to constitute an act of unfair competition.

(3) In this judgment, the court also found that the appellee's act may not be considered to constitute an act of general tort either. In conclusion, the court upheld the judgment in prior instance that dismissed all of the appellants' claims.

Judgment rendered on April 14, 2015

2014 (Ne) 10063 Appeal Case of Seeking Injunction against Copyright Infringement
(Court of prior instance: Tokyo District Court 2013 (Wa) 8040)

Date of conclusion of oral argument: February 10, 2015

Judgment

Appellant: Peter Opsvik AS ("Appellant Opsvik")

Appellant: Stokke AS ("Appellant Stokke")

Appellee: Katoji Co., Ltd.

Main text

1. The appeal filed by the appellants shall be entirely dismissed.
2. The appellants shall bear the court costs.
3. An additional 30-day period shall be given for filing a final appeal against this judgment and a petition for acceptance of the final appeal.

Facts and reasons

No. 1 Purpose of the appeal

1. The judgment in prior instance shall be dismissed.
2. The appellee shall not manufacture, sell, or display for sale the products specified in Attachment 2 "Appellee's Products" (collectively referred to as the "appellee's products"; each of them are respectively referred to as "Appellee's Product 1," etc.).
3. The appellee shall destroy the appellee's products.
4. The appellee shall pay Appellant Opsvik 15,926,856 yen and delay damages accrued thereon at a rate of 5% per annum from June 20, 2013 until the date of full payment.
5. The appellee shall pay Appellant Stokke 119,451,420 yen and delay damages accrued thereon at a rate of 5% per annum from June 20, 2013 until the date of full payment.
6. The appellee shall publish an apology specified in Attachment 5 titled "Apology Advertisement" in the newspaper specified therein in the manner specified therein.

No. 2 Outline of the case

1. Outline of this lawsuit

(1) In this case, the appellants alleged against the appellee that the configurations of the appellee's products manufactured and sold by the appellee have features similar to those of the configuration of the product specified in Attachment 1 titled "Appellants' Product"

manufactured and otherwise handled by the appellants (the "appellants' product") and that the appellee's act of manufacturing and otherwise handling the appellee's products [i] constitutes an act of infringing Appellant Opsvik's copyright for the appellants' product (hereinafter sometimes referred to as the "Appellant Opsvik's copyright") and Appellant Stokke's exclusive right to use said copyright (hereinafter sometimes referred to as the "Appellant Stokke's exclusive right to use"); [ii] can be regarded as an act of assignment, etc. of the appellee's products by using an indication of goods or business that has features similar to those of the configuration of the appellants' product, which can be regarded as the well-known or famous indication of goods or business of the appellants and thereby constitutes an act of unfair competition specified in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act; and, even if such appellee's act does not constitute an act of infringement or an act of unfair competition as mentioned above, it could at least constitute [iii] a general act of tort specified in Article 709 of the Civil Code on the grounds that such act damages the appellants' reputation, etc. [i] The appellants sought an injunction against the appellee's act of manufacturing, selling, and otherwise handling the appellee's products and destruction thereof under Article 3, paragraphs (1) and (2) of the Unfair Competition Prevention Act, while Appellant Opsvik sought the same under Article 112, paragraphs (1) and (2) of the Copyright Act. [ii] Appellant Opsvik demanded the payment of damages and delay damages accrued thereon at a rate of 5% per annum as specified in the Civil Code from the day following the day of the service of a statement of claim for the prior instance until the date of full payment under Article 114, paragraph (3) of the Copyright Act, Article 4 and Article 5, paragraph (3), item (i) of the Unfair Competition Prevention Act, and Article 709 of the Civil Code, while Appellant Stokke demanded the same under Article 114, paragraph (2) of the Copyright Act, Article 4 and Article 5 paragraph (2) of the Unfair Competition Prevention Act, and Article 709 of the Civil Code. [iii] The appellants demanded publication of an apology under Article 14 of the Unfair Competition Prevention Act.

(2) In the prior instance, the court dismissed all of the claims of the appellants by holding as follows. [i] Since it is construed that the designs of the appellants' product do not fall under the category of work to be protected under the Copyright Act, the appellants' claims made based on the alleged infringement of the copyright and the exclusive right to use it are groundless. [ii] If the configuration of the appellants' product is well known among consumers due to its noticeable characteristics that are different from those of conventional chairs, such configuration would fall under a well-known indication of goods or business specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act and would provide grounds for recognizing the occurrence of an act of

unfair competition specified in said item. However, the configurations of the appellee's products cannot be considered to be similar to the indication of goods or business of the appellants' product. Therefore, the appellants' claims made based in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act are groundless. [iii] Based on the evidence submitted to this case, it cannot be found that the configuration of the appellants' product had come to function as a famous indication of goods or business of the appellants. As mentioned above, since the configurations of the appellee's products cannot be considered to be similar to the indication of goods or business of the appellants' product, the appellants' claims made based on item (ii) of said paragraph are groundless. [iv] In view of the facts that the configurations of the appellee's products cannot be considered to have features similar to those of the configuration of the appellants' product and that there is no evidence to prove that traders and consumers were confused about the source of those products, the appellee's act of manufacturing and selling the appellee's products cannot be found to have damaged the reputation, etc. of the appellants. Thus, the aforementioned act of manufacturing and selling the appellee's products cannot be considered to be an illegal act committed under the general principles of torts.

Dissatisfied with this judgment in prior instance, the appellants filed an appeal.

2. Facts on which the decision is premised (the facts not disputed by the parties concerned and the facts that can be easily proven based on evidence including the facts found based on the entire import of the oral argument)

(1) Parties concerned

Both of the appellants are Norwegian companies.

The appellee is a Japanese stock company established for the purpose of selling or otherwise handling various nursery items and furniture.

(2) The appellants' product is a chair for small children, while it can be used for babies, etc. as well (hereinafter sometimes simply referred to as "high chair(s)"). Its external appearance, components, characteristics and shape are as described in Attachment 1 titled "Appellants' Product" and Section I of Attachment 3 titled "Outline of the Appellants' Product and the Appellee's Products."

The representative of Appellant Opsvik is a famous designer in Norway at present. In around 1972, he designed the appellants' product and launched it from Appellant Stokke. Since then, Appellant Stokke has been manufacturing, selling, and exporting the appellants' product.

The appellants' product has been imported and sold in Japan since 1974 (Exhibits Ko 2 to 10).

(3) The appellee's products are also high chairs. Their external appearances, components, characteristics and shapes are as described in Attachment 2 titled "Appellee's Products" and Section II of Attachment 3 titled "Outline of the Appellants' Product and the Appellee's Products."

The appellee started manufacturing and selling Appellee's Product 1, Appellee's Product 2, Appellee's Product 3, and Appellee's Product 4 from January 2011, May 2012, February 2006, and August 2010 at the latest, respectively. Currently, the appellee is manufacturing and selling Appellee's Product 5 and Appellee's Product 6. The appellee stopped manufacturing Appellee's Product 1 in February 2013.

3. Issues

(1) Whether the appellants' copyright or the exclusive right to use it were infringed

A. Whether the appellants' product is copyrightable and whether the appellants have a copyright and the exclusive right to use it

B. Whether an act of infringement was committed or not

(2) Whether the appellee's act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act

A. Configuration that falls under the "indication of goods or business" of the appellants' product

B. Whether the "indication of goods or business" of the appellants' product is well known

C. Whether the configurations of the appellee's products are similar to the configuration of the "indication of goods or business" of the appellants' product.

D. Whether an "act of causing confusion" was committed

(3) Whether the appellee's act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (ii) of the Unfair Competition Prevention Act

A. Whether the "indication of goods or business" of the appellants' product is famous

B. The same as specified in (2) A and C above

(4) Whether the appellee's act constitutes a general act of tort

(5) Acceptability of each claim

A. Acceptability of the claim for an injunction

B. Acceptability of the claim for the payment of damages

C. Acceptability of the claim for the publication of an apology

(omitted)

No. 3 Court decision

1. Issue (1) Whether the appellants' copyright or the exclusive right to use it were infringed

(1) Whether the appellants' product is copyrightable and whether the appellants have a copyright and the exclusive right to use it

A. Whether the appellants' product is copyrightable

(A) a. (a) Article 2, paragraph (1), item (i) of the Copyright Act defines "work" by stating that "'work' means a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain." Article 10, paragraph (1) of said Act gives examples of "work."

In consideration of the fact that the appellants' product is a high chair, the copyrightability thereof should be determined by examining whether such chair falls under "paintings, woodblock prints, sculptures, and other works of fine art" specified in item (iv) of said paragraph, which is one of the aforementioned examples.

Regarding this point, Article 2, paragraph (2) of said Act specifies that "an 'artistic work' includes a work of artistic craftsmanship." In light of Article 10, paragraph (1), item (iv) of said Act as mentioned above, "a work of artistic craftsmanship" can be interpreted to mean a work of craftsmanship designed mostly for the purpose of artistic appreciation in a manner similar to "paintings, woodblock prints, sculptures" as specified in said item.

However, since the appellants' product is a high chair, it is designed primarily for the purpose of practical use. Thus, it is obvious that it does not fall under "a work of artistic craftsmanship."

(b) Now, the issue lies in whether the appellants' product, which is a useful article, can be considered to be copyrightable as an artistic work.

Regarding this point, it is necessary to examine whether a work of expression, i.e., a so-called work of applied art, which is designed to be used for practical or industrial purposes ("work of applied art") can be considered to fall under "artistic work." Regarding a work of applied art, the Copyright Act has no explicit provisions.

However, in light of the fact that the purpose of the Copyright Act is "to ensure protection for the rights of authors, etc. while according attention to the fair exploitation of these cultural products, and thereby to contribute to the development of culture" (Article 1 of said Act), it would not be unreasonable to immediately deny the existence of copyrightability for all of the works of expression just because they are designed to be used for practical or industrial purposes. Since Article 2, paragraph (2) of said Act merely presents examples of artistic work, it should be interpreted that a work of applied art that does not fall under a "work of artistic craftsmanship" as exemplified in said paragraph could be protected as an "artistic work" under said Act as long as said work of applied art

satisfies the copyrightability requirements specified in paragraph (1), item (i) of said Article.

Therefore, the appellants' product could be protected as an "artistic work" under said Act as long as it satisfies the copyrightability requirements as mentioned above.

b. An analysis of the copyrightability requirements has revealed that, in order for a work of expression to be regarded as a copyrightable "work" under the Copyright Act, it should be a "production in which thoughts or sentiments are creatively expressed" (Article 2, paragraph (1), item (i) of said Act). In order for a work to be regarded as "creatively expressed," the work is not necessarily required to express the creator's originality in a strict sense. However, the work is required to express certain unique characteristics of the creator. Any expression that is ordinary and commonplace can be regarded neither as an expression of the unique characteristics of the creator nor as a "creative" expression. In order for a work, etc. to be regarded as a "creative" expression, the work is not necessarily required to express the creator's originality in a strict sense. However, the work is required to express certain unique characteristics of the creator. Any expression that is ordinary and commonplace can be regarded neither as an expression of the unique characteristics of the creator nor as a "creative" expression."

A work of applied art comes in a variety of forms such as being independently used as a useful article such as accessories, being integrated with a useful article such as an engraving on furniture, and being used as a pattern on useful articles such as a design for dyeing (Exhibits Ko 90, 91, 93, and 94). Since the manner of expression varies greatly, it would not be reasonable to establish uniform criteria to determine whether a work of applied art exhibits a high level of creativeness. Such determination as to whether the unique characteristics of the creator are expressed should be made on a case-by-case basis.

c. An allegation of copyright infringement would not be accepted unless the allegedly infringed part of a work of applied art is copyrightable. It can be interpreted that the appellants alleged that they detected copyright infringement on such characteristics of the configuration of the appellants' product as alleged by the appellants, in other words, the configuration created by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A, which are placed right and left, while Member G (seat) and Member F (leg rest) are inserted and fixed into those grooves, with Member A standing obliquely from the floor" as described in I (2) of Attachment 3 titled "Outline of the Appellants' Product and the Appellee's Products" (the "outline of the appellants' product").

The following section examines whether the characteristics of the configuration of the appellants' product as alleged by the appellants are copyrightable or not.

(B) a. Except for office chairs, sofas, stools, etc., it is relatively common for a chair usually used by one person at home such as a dining chair, living chair, and a chair for a study desk to have four legs (Exhibits Ko 45, 84, Otsu 17-1 to 17-3, 21, 22, etc.). The report on a safety test on chairs for babies and children conducted by the National Consumer Affairs Center of Japan only shows the images of four-legged chairs for babies and small children, but does not show any images of two-legged chairs (Exhibits Otsu 29-1 and 29-2). Thus, it can be presumed that it is relatively common to see four-legged chairs in the market for high chairs, to which both the appellants' product and appellee's products belong.

On these grounds, the characteristics of the configuration of the appellants' product as alleged by the appellants can be considered to be unique in the sense that they have two legs made of "a pair of Member A, which are placed right and left."

b (a) Regarding this point, all of the following chairs have two legs and have a configuration consisting of "a pair of Member A" "standing obliquely from the floor": "ウィッパーズ スウィングチェア" (Wippers Swing Chair) ("Wippers"), Geuther Kid Hit ("Geuther"), "スクスク すくすくチェア F X" (SUKUSUKU Sukusuku Chair FX) ("SUKUSUKU"), "シャート スターハイチェア" (Shāto Star High Chair) ("Shāto"), and "アプリカUN マミーズカドル" (Aprica UN Mammy's Cuddle) (Aprica UN), which were featured in the magazine titled "Baby Life no. 1" (Exhibit Ko 42) published in January 2006 as some of the high chairs for babies and small children marketed in Japan around that time, and "ダックチェア" (Dakku Chair) featured in the magazine titled "Semasa kokuhuku sensu appu ressun, yume o hagukumu kodomobeya" (Fashion sense improvement lesson to overcome the lack of space, Dreamy children's room) published in November 1993 (Exhibit Otsu 12), "パロットチェア" (Parrot Chair) presented on the website of Takumi Kohgei (Exhibit Otsu 13) (the date of the establishment of the website and the date of the posting of the information about the chair are unknown), "コイノドチェア" (Koinodo Chair) presented in the document titled "Kindai isugaku kotohajime" (Introduction to the study of modern chairs) published in November 2002 (Exhibit Otsu 14), "T-5427" presented in the document titled "Kagu dezain no chōryū, Chea dezain uwocchingu, Aichi ken" (Trends in furniture design, Chair design watching, Aichi prefecture) published in October 1990 (Exhibit Otsu 15).

(b) i. It is clear that Shāto, Dakku Chair, Parrot Chair, Koinodo Chair and T-5427 do not have a configuration created by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A," while "Member G (seat) and Member F (leg rest) are inserted and fixed into" those grooves.

ii. On the other hand, it can be considered that Wippers, Geuther, SUKUSUKU, and

Aprica UN have the same features as those of the configuration of the appellants' product as alleged by the appellants as far as Member G (seat) and Member F (leg rest) are concerned (although the leg rest of Geuther might be fixed).

However, in the case of the appellants' product, Member A is connected to Member B at the angle of about 66 degrees (the entire import of the oral argument). On the other hand, in the case of Wippers and Geuther, it can be observed that Member A is connected to Member B at the angle of almost 90 degrees. Furthermore, in the case of the appellants' product, Member A is connected only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor. Such configuration cannot be observed in any of Wippers, Geuther, SUKUSUKU, and Aprica UN. In other words, in the case of Wippers, the edge of Member A is connected with the edge of Member B by black fasteners. In the case of Geuther and Aprica UN, Member A is connected to Member B at the area that is rather closer to the front side from the center of the upper surface of Member B. Member A does not touch the floor. In the case of SUKUSUKU, Member A and Member B are connected in such a way that the connecting part forms a triangle shape.

On these grounds, it can be determined that Wippers, Geuther, SUKUSUKU, and Aprica UN are different from the appellants' product, which objectively have a configuration in which "Member A stands obliquely from the floor" and Member A is connected to Member B at a sharp angle (Regarding the configuration of Aprica UN, there was another lawsuit filed by the appellants against Aprica Children's Products K.K. to seek an injunction against Aprica's act of copyright infringement [Tokyo District Court, 2009 (Wa) 1193]. For this lawsuit, the court handed down a judgment on November 18, 2010, holding that the configuration of Aprica's product can be considered to be similar to that of the appellants' product as an indication of goods or business under Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act. While this judgment has already been finalized [Exhibit Ko 50 and the entire import of the oral argument], this does not affect the aforementioned court determination).

iii. In the case of the appellants' product, Member A is connected to Member B at an angle narrower than the corresponding angle observed in Shāto, Dakku Chair, Parrot Chair, Koinodo Chair, or T-5427. In terms of the manner of connecting Member A with Member B, only one of the aforementioned chairs, namely, Shāto, is identical with the appellants' product.

Thanks to the angle and the manner of connection between Member A and Member B as mentioned above, the appellants' product gives a sharper image than other two-legged chairs.

c. Therefore, in order to better understand the functions of high chairs, it is a good idea to

refer to "Nyūyōjiyou hai chea no nintei kijun oyobi kijyun kakunin houhou" (Accreditation criteria for high chairs for babies and small children and the method to apply the criteria) (Exhibit Otsu 30), which specifies "Check items," "Accreditation criteria," and "Method to apply the criteria" in order to ensure the safety and quality of high chairs for babies and small children (the "safety and quality criteria"). The criteria established for one of those items, "External appearance, structure, and size," include abstract criteria such as "(1) All of the members must be connected tightly" and criteria specifying the limitations on the height and the size and strength of each member from the perspective of safety such as "the maximum height from the floor to the middle part of the front edge of the seat must be somewhere between 450 mm and 600 mm (both inclusive)." These criteria do not specify concrete configuration.

Meanwhile, in light of the purpose of a high chair, it is considered to be necessary to adjust the height of the seat and the leg rest in accordance with the growth of the body of the child who uses it. Such adjustment could be made by any of the widely available methods such as by using bolts, hooks, screws, or any other fasteners other than the method available only if the chair has features identical with those of the configuration of the appellants' product as alleged by the appellants, more specifically, the method of adjusting the height by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A, which are placed right and left" and inserting "Member G (seat) and Member F (leg rest) into those grooves" and changing grooves into which "Member G (seat) and Member F (leg rest)" are to be inserted (Exhibits Otsu 8-4, 8-5, etc.).

In light of these facts, it cannot be said that the characteristics of the configuration of the appellants' product as alleged by the appellants were inevitably chosen due to the lack of any other options because of the limitations imposed by the functions of the appellants' product as a high chair.

d. On these grounds, the characteristics of the configuration of the appellants' product as alleged by the appellants can be considered to be a "creative expression" that exhibits the unique characteristics of the creator, namely, Appellant Opsvik, in terms of the following points: [i] the appellants' product has two legs consisting of a pair of Member A, which are placed right and left, while "Member G (seat) and Member F (leg rest) are inserted and fixed into the grooves" formed "on the internal side of a pair of Member A" and [ii] Member A is connected only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor, while Member A is connected to Member B at the angle of about 66 degrees.

Therefore, the appellants' product can be considered to be copyrightable in terms of

the aforementioned points and can therefore be regarded as an "artistic work."

(C) a. The appellee alleged that, in order for a work of applied art to be regarded as copyrightable, the work must, from the perspective of trying to achieve an appropriate balance between the protection under the Copyright Act and the protection under the Design Act, exhibit such level of artistic creativeness that deserves aesthetic appreciation apart from its practical functions.

(a) However, as mentioned above, there are different kinds of works of applied art that have adopted various manners of expression. Thus, it would not be reasonable to establish, without any grounds provided by explicit legal provisions, uniform criteria to determine the level of creativeness exhibited by works of applied art from the perspective of beauty.

In particular, in the case where a useful article itself is a work of applied art, it would be very hard to distinguish the features indispensable for practical functions from any other features of such work of expression. It would not be reasonable to deny the copyrightability of any feature that cannot be classified into either of the aforementioned categories because it would make it almost impossible for any work of applied art that functions as a useful article as a whole to be regarded as copyrightable.

Furthermore, in view of the facts that "beauty" is almost always determined based on subjective evaluation, that the definition of "beauty" differs greatly from one person to another, and that it is often difficult to establish uniform criteria for beauty even if an evaluation of beauty is conducted as objectively as possible, it has to be said that "beauty" criteria are difficult to establish.

(b) As the grounds for the aforementioned allegation, the appellee pointed out as follows.

[i] It would not be reasonable to apply both the Copyright Act and the Design Act at the same time. [ii] We should be careful about applying the Copyright Act to a product that is considered to be a work of applied art because it could interfere with the production and use of goods that belong to the same industrial field as said product. From this perspective, in consideration of the facts that a work of pure art can be created for the purpose of expressing beauty without any restrictions and that a work of applied art has to be created for practical or industrial purposes, a work of applied art should be considered to be copyrightable only if protection of said work under the Copyright Act is considered to be indispensable although such copyright protection would interfere with the use and distribution of such work of applied art.

i. In the process of drafting the current Copyright Act, an issue was raised as to how works of applied art should be treated under the Copyright Act and the Design Act. Some pointed out a risk of causing damage if both Acts are simultaneously applied. In particular, there was opposition to the idea of protecting works of applied art other than works of

artistic craftsmanship under the Copyright Act. It can be presumed that discussions were conducted on the premise of the necessity to make adjustments between the Copyright Act and the Design Act and to draw a line between the two Acts in terms of the scope of applicability (Exhibits Ko 90, 91, 93, and 94).

However, when the current Copyright Act was established, the Committee on Education of both the House of Representatives and the House of Councilors adopted resolutions accompanying the enactment of the Act. Those resolutions respectively state that "3. When discussions are held about new issues in the future, it is necessary to positively consider various issues such as the protection of works of applied art (omitted) in order to reflect social changes over time" and "3. Regarding (omitted) the issue of protection of works of applied art (omitted), it is urgently necessary to review and improve the system promptly" (Exhibit Ko 92). In light of the fact that the issue of protection of works of applied art was considered to be one of the topics for further examination, it can be presumed that, as of the establishment of the current Copyright Act, further examination was expected to be conducted with regard to the application of the Copyright Act and the Design Act to works of applied art.

Since the Copyright Act is different from the Design Act in terms of the objective and purpose (Article 1 of the Copyright Act and Article 1 of the Design Act), there are no explicit legal provisions stating that either Act shall be exclusively and preferentially applied, while the other Act shall be considered to be inapplicable or subordinate. No reasonable grounds for such interpretation can be found either.

A copyright arises for a work when it is created without any procedures, etc. (Article 51, paragraph (1) of the Copyright Act), whereas a design right arises only if it is registered (Article 20, paragraph (1) of the Design Act). While a design right is more difficult to obtain, a design right can be exercised even against an infringer who uses a design identical or similar to the registered design without depending thereon. In this sense, it can be interpreted that design protection is stronger than copyright protection. In light of these facts, simultaneous application of the two Acts to a limited range of articles would not totally deny the *raison d'être* of the Design Act and the incentive for design registration.

In view of these facts, it should be said that it is difficult to find reasonable grounds for making it extremely hard to recognize the copyrightability of works of applied art on the assumption that such works could be protected under the Design Act.

If the criteria to recognize the copyrightability are made especially strict for works of applied art, it would lead to the situation where copyright protection cannot be provided to a work that could be found copyrightable from the perspective of the exhibition of

unique characteristics of the creator, if said work comes in a different form of expression.

ii. Since a work of applied art is created for practical or industrial purposes, a work of applied art needs to perform certain functions to achieve those practical and industrial purposes. Consequently, expressions must be selected so that they would not prevent the work of applied art from performing such functions. Due to such limitations imposed on the expressions that can be embodied in a work of applied art, the options available for the creator to express his/her unique characteristics would be limited. Thus, in most cases, the range of works of applied art that can be considered to be creative and copyrightable is narrower than the range of other works of expression on which the aforementioned limitations would not be imposed. Also, it is expected that the scope of copyright protection given to a copyrightable work of applied art would be relatively narrow.

In light of these facts, in the case of a work of applied art, as in the case of other works of expression, as long as the expression embodied in the work exhibits unique characteristics of the creator, the recognition of the work of applied art as creative and copyrightable would not go so far as to prevent the work of applied art from fulfilling its practical and industrial purposes in the course of the use and distribution thereof in society in general.

(c) On these grounds, the aforementioned allegation of the appellee is unacceptable.

b. The appellee alleged that, if industrial products in general, wherein aesthetic creativity is not prioritized, are considered to be copyrightable, it would cause excessive copyright protection and that, in consideration of the facts that the appellants' product is a useful article, namely chair, and that the configuration of the appellants' product as alleged by the appellants pertains to the shape of its legs, which constitute the basic structure indispensable for a chair, and that, if copyright protection is generally provided to such an article that can embody only a limited amount of creativeness, it would cause an undesirable situation where an excessive number of copyrights have to be granted to protect a large number of chairs that are identical or almost identical to the appellants' product.

However, since a work of applied art can be considered to be copyrightable only if it is an "artistic work," the expressions embodied in such work must be in line with the practical and industrial purposes of the work as mentioned in a. (b) ii. above. Due to such limitation, the range of works of applied art that can be considered to be copyrightable is relatively smaller in comparison with any other works of expression. Even if a work of applied art is considered to be copyrightable, the scope of its copyright protection is relatively narrow in most cases. Thus, there is no realistic risk of causing trouble such as excessive patent protection as alleged by the appellee.

On these grounds, the aforementioned allegation of the appellee is unacceptable.

B. Whether the appellants have a copyright and the exclusive right to use it

According to the evidence (Exhibit Ko 14) and the entire import of the oral argument, the copyright for the appellants' product was assigned from the representative of Appellant Opsvik to Appellant Opsvik in around 1972. Appellant Opsvik granted to Appellant Stokke the right to exclusively use the copyright.

Therefore, it can be considered that Appellant Opsvik owns a copyright for the appellants' product and that Appellant Stokke has the right to exclusively use the copyright.

(2) Whether an act of infringement was committed or not

A. As mentioned above, the appellants' product can be considered to be copyrightable in terms of the following characteristics of the configuration of the appellants' product as alleged by the appellants: [i] the appellants' product has two legs consisting of a pair of Member A, which are placed right and left, while "Member G (seat) and Member F (leg rest) are inserted and fixed into the grooves" formed "on the internal side of a pair of Member A" and [ii] Member A is connected only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor, while Member A is connected to Member B at the angle of about 66 degrees.

In light of these facts, in order to determine whether Appellant Opsvik's copyright and Appellant Stokke's exclusive right to use it have been infringed or not, an examination should be conducted to determine whether the appellee's products are similar to the appellants' product in terms of the aforementioned features, which make the appellants' product copyrightable.

B. (A) As mentioned above, the appellants' product is copyrightable in terms of the following characteristics of its configuration as alleged by the appellants: [i] the appellants' product has two legs consisting of a pair of Member A, which are placed right and left and [ii] while "Member G (seat) and Member F (leg rest) are inserted and fixed into the grooves" formed "on the internal side of a pair of Member A. Since all of the appellee's products are four-legged, it is obvious that the appellee's products are different from the appellants' product in terms of the feature mentioned in [i] above.

On the other hand, the appellee's products have a configuration consisting of "Member G (seat) and Member F (leg rest) inserted into multiple grooves formed in parallel with the floor on the internal side" of two front legs out of its four legs, which correspond to "a pair of Member A, which are placed right and left" of the appellants' product. In terms of the feature specified in [ii] above, the appellee's products are identical with the appellants' product. The Appellee's Products 3, 4, and 6 can be considered to be similar

to the appellants' product in terms of the manner of connection between Member A and Member B.

However, the aforementioned difference in the number of legs can be considered to be a significant difference with regard to the basic structure of a chair. This difference should be considered to overshadow any other commonalities.

On these grounds, the appellee's products cannot be considered to be similar to the appellants' product in terms of the features that make the appellants' product copyrightable. (B) According to the evidence (Exhibits Ko 71 to 78), a considerable number of consumers gave opinions and comments that can be interpreted to the effect that the appellee's products are similar to the appellants' product by saying, for example, that "Katoji's products are almost the same as TRIPP TRAPP in terms of shape" (Exhibit Ko 73). It is not clear whether all of these opinions and comments were made based on the evaluation that the appellants' product is copyrightable. Thus, these comments and opinions cannot be considered to affect the aforementioned conclusion.

C. Therefore, the appellee's act of manufacturing and selling the appellee's products cannot be considered to constitute an act of infringing Appellant Opsvik's copyright and Appellant Stokke's exclusive right to use it.

2. Issue (2) Whether the appellee's act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act

(1) Configuration that falls under the "indication of goods or business" of the appellants' product

A. The purpose of Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act is to ensure fair competition among companies (Article 1 of said Act) and to prohibit any act of using or otherwise handling an indication of goods or business that is identical or similar to another person's well-known indication of goods or business, and thereby causing confusion or misunderstanding among consumers and free-riding another person's business reputation, and to protect the source-identifying function of a well-known indication of goods or business.

Unlike the trade name, trademark, etc. presented as examples of indication of goods or business specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, the configuration of goods is selected primarily from the perspective of ensuring the performance of the functions of the goods and the enhancement of aesthetic appearance and is not originally selected as an identifier of the source of goods or services.

If the configuration of goods is objectively and clearly unique and distinguishable from those of other similar goods, it would be recognized by consumers as an identifier

of the specific source of goods in the course of trade and, could secondarily, acquire the function of identifying the source.

In light of these facts mentioned above, the configuration of goods could fall under "indication of goods or business" specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, if [i] the configuration has characteristics that are objectively considerably different from those of similar goods (particularly noticeable) and [ii] the configuration has become well known among consumers as a source identifier of a specific company (well-known) as a result of a long, continuous, and exclusive use of the configuration by the company and intensive advertisement, publication, etc. by the company.

B. According to 1 (1) A. above, the appellants' product can be considered to be particularly noticeable in the sense that the unique characteristics of the creator, namely the representative of Appellant Opsvik, is expressed therein, more specifically, in the sense that the appellants' product has the following configuration as alleged by the appellants: [i] the appellants' product has two legs consisting of a pair of Member A, which are placed right and left, while "Member G (seat) and Member F (leg rest) are inserted and fixed into the grooves" formed "on the internal side of a pair of Member A" and [ii] Member A is connected only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor and is connected to Member B at the angle of 66 degrees.

Furthermore, according to the evidence mentioned below and the entire import of the oral argument, it can be presumed that the appellants' product [i] has been publicized and advertised throughout Japan together with photographs, etc. showing its configuration since around the time of product launch in 1974 (Exhibits Ko 1, 4, 5, 7, 9, and 15 to 23, etc.) and [ii] has been popular among consumers, i.e. purchasers of high chairs, and has been sold through various routes in large number (Exhibits Ko 79 to 83).

On these grounds, it can be found that the appellants' product had become well known as a source identifier of the appellants by around February 2006, in which the appellee started manufacturing and selling Appellee's Product 3.

Thus, it can be said that the appellants' product had become an "indication of goods or business" of the appellants by around February 2006.

C. (A) The appellee alleged that, in order to ensure safety, a high chair with a certain height has to have the configuration that allows its legs consisting of Member A and Member C to stand from the floor obliquely.

However, as mentioned in 1 (1) A. (B) c. above, the safety and quality criteria do not specify concrete configuration. Thus, it is clear that the aforementioned configuration was

not designed based solely on said criteria. There is no sufficient evidence to prove that the adoption of the aforementioned configuration was inevitable from the perspective of safety.

Therefore, the aforementioned allegation of the appellee is unacceptable.

(B) a. The appellee alleged that the configuration of the appellants' product as alleged by the appellants cannot be considered to be an identifier that distinguishes the appellants' product from other similar products, in consideration of the facts that [i] the folding chairs presented in Exhibits Otsu 10 and 11, Dakku Chair (Exhibit Otsu 12), Parrot Chair (Exhibit Otsu 13), Koinodo Chair (Exhibit Otsu 14), and T-5427 (Exhibit Otsu 15), and the chair presented in Exhibit Otsu 16 share the same configuration as the appellants' product and [ii] regarding the configuration created by forming multiple grooves on the legs (Member A) and inserting plates (Member F and Member G) into those grooves so that height adjustment is possible, said configuration can be regarded as commonplace and considered to have been adopted by many chairs.

b. (a) The folding chairs presented in Exhibits Otsu 10 and 11 and the chair presented in Exhibit Otsu 16 are different from the aforementioned particularly noticeable features of the appellants' product in the sense that all of these chairs have four legs.

In the case of Dakku Chair, Parrot Chair, Koinodo Chair, and T-5427, as mentioned in 1 (1) A. (B) above, all of these chairs are different from the appellants' product in terms of the aforementioned particularly noticeable features of the appellants' product, i.e., the features created by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A" and inserting "Member G (seat) and Member F (leg rest) into those grooves."

These differences can be considered to be pertaining to the especially important features of the configuration of the product as a whole among the aforementioned particularly noticeable features of the appellants' product. Thus, these differences should be considered to overshadow any commonalities in other features and provide grounds to deny the similarity between the appellee's products and the appellants' product.

(b) Even though a considerable number of chairs have adopted the configuration that allows height adjustment, etc. by forming multiple grooves on the legs (Member A) and inserting plates (Member F and Member G) into those grooves, the chairs that have adopted the configuration consisting of two legs in the same manner as the appellants' product are limited to Wippers, Geuther, SUKUSUKU, and Aprica UN according to the evidence submitted to this case. Moreover, no chairs seem to have adopted a configuration that connects Member A only at the diagonally-cut edge face in the front part of Member B so that Member A directly touches the floor and that Member A connects to Member B

at the angle of 66 degrees in the same manner as the appellants' product.

c. On these grounds, regarding the configuration of the appellants' product as alleged by the appellants, the particularly noticeable features cannot be considered to be commonplace. Thus, the aforementioned allegation of the appellee is unacceptable.

(C) a. The appellee alleged that the configuration of the appellants' product as alleged by the appellants does not have the source-identifying function on the grounds that [i] from the viewpoint of consumers who came across the publications, advertisements, etc. of the appellants' product, many of which presented the appellants' product in such manner that focused on the shape of the side of the product, it was almost impossible for them to recognize the configuration of the appellants' product as alleged by the appellants, i.e., the configuration created by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A" and to pay attention to "Member G (seat)" and "Member F (leg rest)" and that [ii] while major consumers of the appellants' product, i.e., the parents of small children, would determine which chair to buy after carefully evaluating its structural safety, the important points in the evaluation would not be Member A, which is a part of the legs, while none of the grooves formed on Member A and neither "Member G (seat)" nor "Member F (leg rest)" would attract consumers' attention either.

b. (a) From this perspective, it can be said that some of the publications, advertisements, etc. of the appellants' product cannot be considered to have always focused solely on the shape of the side of the product. Not a few publications, advertisements, etc. presented a front view of the configuration of the product (Exhibits Ko 71, 72, 89, Otsu 6, 7, 24-2, etc.).

Therefore, it cannot be necessarily considered that the publications, advertisements, etc. of the appellants' product were made in a manner to make it almost impossible for consumers to recognize the configuration created by forming "multiple grooves in parallel with the floor on the internal side of a pair of Member A, which are placed right and left" and to pay attention to "Member G (seat)" and "Member F (leg rest)."

(b) i. For the parents of small children, product safety is usually the most important factor when they make a decision to purchase a high chair. The structure of Member A, which functions as the legs that support the seat of the appellants' product, plays a significant role to ensure safety. Thus, consumers are expected to pay great attention to the structure of Member A, when deciding to purchase the appellants' product.

ii. The seat (Member G) is an integral part of a chair, providing a place for a small child to directly sit on. Since it is the seat that touches the body of a small child, it is obvious that consumers would pay great attention to the seat from the perspective of safety and

stability.

While a leg rest (Member F) is not necessarily indispensable for a chair, it is necessary for small children whose legs do not touch the floor to gain stability, while they are seated.

The function to adjust the height and depth of the seat and the function to adjust the height and depth of the leg rest are considered to be important to maintain correct posture and this stability, respectively (Exhibits Ko 1, 5, etc.). In particular, it is necessary for a high chair to have a function to adjust the height of the seat and the leg rest in accordance with the physical growth of the child.

In light of these facts, it can be presumed that, when consumers select the appellants' product, they pay great attention to the seat (Member G) and leg rest (Member F) and also to its height adjustment function made possible by "Member G (seat) and Member F (leg rest)" "inserted" into the "multiple grooves formed in parallel with the floor" on the "internal side of a pair of Member A, which are placed right and left."

c. On these grounds, the aforementioned allegation of the appellee is unacceptable.

(2) Whether the "indication of goods or business" of the appellants' product is well known

According to (1) B. above, the fact that the configuration of the appellants' product as alleged by the appellants is particularly noticeable indicates that said configuration is well known as an indication of the appellants.

(3) Whether the configurations of the "indication of goods or business" of the appellee's products are similar to the configuration of the appellants' product

A. According to 1 (2) above, the configurations of the appellee's products cannot be considered to be similar to the configuration of the "indication of goods or business" of the appellants' product, in other words, the particularly noticeable features of the configuration of the appellants' product as alleged by the appellants.

B. (A) The appellants alleged that [i] the configurations of the appellee's products have features similar to the features of the configuration of the appellants' product as alleged by the appellants and that the appellee's products and the appellants' product share the major feature that would remind viewers of the shape of a stepladder, and that the appellee's products are identical with the appellants' product in terms of the facts that both products are made of wood and that those products have metal members in the lower part and the middle part of Member A, [ii] many consumers have pointed out the similarity between the appellee's products and the appellants' product, [iii] while the structure of the appellee's products is different from the appellants' product in that the appellee's products have Member C, which does not exist in the appellants' product, this difference is so subtle that it would not affect the similarity in the overall impressions of the viewers, and [iv] it can be found that the appellee intended to free-ride the reputation of the appellants when

determining the configurations of the appellee's products and that this should be taken into consideration when recognizing the similarity.

(B) a. (a) As mentioned in 1 (2) above, among the characteristics of the configuration of the appellants' product as alleged by the appellants, the following two features can be considered to be particularly noticeable, [i] the appellants' product has two legs consisting of "a pair of Member A, which are placed right and left" and [ii] both "Member G (seat) and Member F (leg rest) are inserted and fixed into the grooves" formed "on the internal side of a pair of Member A." Since all of the appellee's products have four legs, they are clearly different from the appellants' product in terms of the feature mentioned in [i] above. The aforementioned difference in terms of the number of legs can be considered to be a significant difference related to the fundamental structure of a chair and can therefore be considered to overshadow any commonalities.

(b) While the difference in the number of legs could be considered to be the same as the issue of the existence or nonexistence of Member C in substance, the appellants alleged that the existence or nonexistence of said Member would make such a subtle difference that it would not affect the similarity in the overall impressions of the viewers.

However, as mentioned in 1 (2) above, the difference in the number of legs greatly affects the fundamental structure of a chair and makes a great difference in the external appearance. Thus, the aforementioned allegation of the appellants should be considered to be unreasonable.

b. The appellants alleged that many consumers pointed out the similarities between the appellee's products and the appellants' product. As described in 1 (2) above, according to the evidence submitted to this case, it is true that the considerable number of consumers presented opinions and comments that can be interpreted to be pointing out the similarities between those products as mentioned above.

However, in order to find the appellee's act as an act of unfair competition specified in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, the appellee's products need to be considered to be similar to the appellants' product in terms of "another person's indication of goods or business" as specified therein, which can be interpreted to mean, in this case, the particularly noticeable features of the configuration of the appellants' product as alleged by the appellants. It is not clear whether the aforementioned opinions and comments were made based on such noticeable features as mentioned above.

c. While the appellants alleged that the appellee intended to free-ride the appellants' reputation when determining the configurations of the appellee's products, there is no evidence to prove the existence of such intention.

(C) On these grounds, the aforementioned allegation of the appellants is unacceptable.

(4) Whether the appellee's act falls under an "act of causing confusion"

As mentioned in (3) above, the configurations of the appellee's products cannot be considered to have features similar to the particularly noticeable features of the configuration of the appellants' product as alleged by the appellants. Thus, the appellee's act of manufacturing, selling, or otherwise handling the appellee's products cannot be considered to fall under an "act of causing confusion."

3. Issue (3) Whether the appellee's act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (ii) of the Unfair Competition Prevention Act

As mentioned in 2 (3) above, since the configurations of the appellee's products cannot be considered to have features similar to the particularly noticeable features of the configuration of the appellants' product as alleged by the appellants, it is obvious that the appellee's act of manufacturing, selling, or otherwise handling the appellee's products does not constitute an act of unfair competition specified in Article 2, paragraph (1), item (ii) of the Unfair Competition Prevention Act.

4. Issue (4) Whether the appellee's act constitutes a general act of tort

As mentioned in 2 and 3 above, in view of the facts that the appellee's products cannot be considered to be counterfeits of the appellants' product and that the appellee's act of selling and otherwise handling the appellee's products does not constitute an act of causing confusion between the appellee's products and the appellants' product, it is clear that the appellee's act does not constitute a general act of tort.

No. 4 Conclusion

On these grounds, without needing to examine any other factors, the conclusion of the judgment in prior instance is reasonable. The appeal shall be entirely dismissed due to the lack of grounds. The judgment shall be rendered in the form of the main text.

Intellectual Property High Court, Second Division

Presiding judge: SHIMIZU Misao

Judge: SHINTANI Takaaki

Judge: SUZUKI Wakana

Attachment 1

Appellants' Product

Product name: TRIPP TRAPP

Colors: European oak, American walnut, walnut, brown, natural, white, white wash, cherry, black, red, green, purple, dark blue, pale pink

Configuration: As shown below



Attachment 2

Appellee's Products

1. Appellee's Product 1

Product name:

スタイリッシュハイチェア New York Baby (Stylish High Chair New York Baby)

Configuration: As shown below



2. Appellee's Product 2

Product name:

エースチェア (Ace Chair)

Configuration: As shown below



3. Appellee's Product 3

Product name:

スーパーベビーチェア 1 or 2 (Super Baby Chair 1 or 2) (The difference between 1 and 2 is the existence or nonexistence of a cushion as an accessory)

Configuration: As shown below



4. Appellee's Product 4

Product name:

プレミアムベビーチェア (Premium Baby Chair)

Configuration: As shown below



5. Appellee's Product 5

Product name:

トライアングルチェア (Triangle Chair)

Configuration: As shown below



6. Appellee's Product 6

Product name:

プレミアムベビーチェア2 (Premium Baby Chair 2)

Configuration: As shown below



Attachment 3

Outline of the Appellants' Product and the Appellee's Products

I. Appellants' Product

(1) Photographs

[Right front view]



[Side view]



[Left front view]

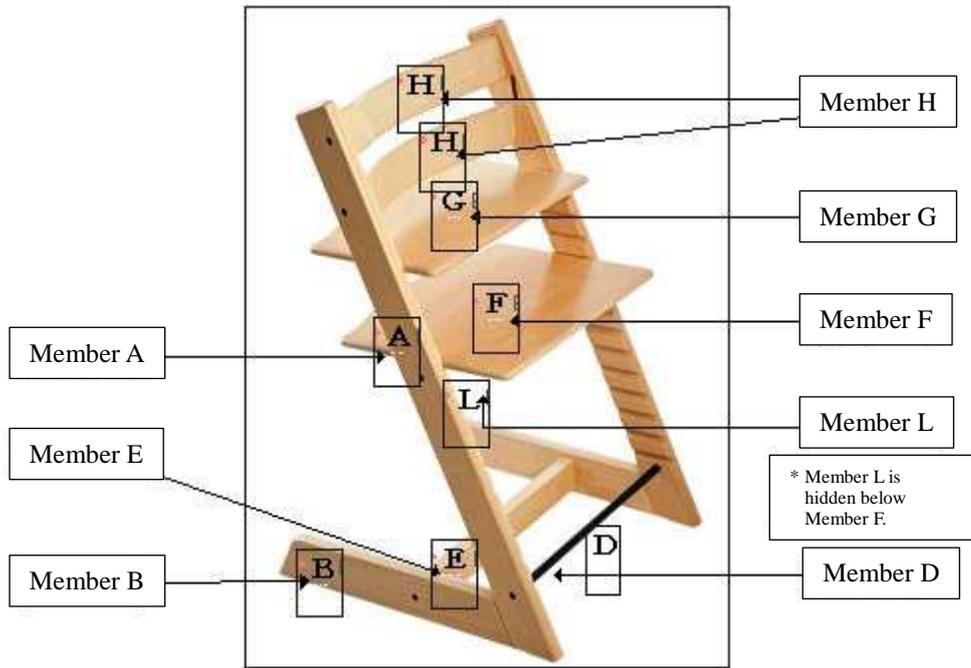


[Front view]



(2) Component parts

The component parts of the appellants' product are as follows.



Member I is a baby guard designed to prevent the baby from falling down as shown in the [Side view] and [Left front view] of the photographs presented in (1) above.

(3) Characteristics and shape

- A. Materials: Wood, Member D and Member L are made of metal.
- B. Size (approximately): 79 cm (height), 46 cm (width), and 50 cm (depth)
- C. Colors: European oak, American walnut, walnut, brown, natural, white, white wash, cherry, black, red, green, purple, dark blue, pale pink
- D. Number of grooves formed on Member A: 14

II. Appellee's Products

1. Appellee's Product 1

(1) Photographs

[Right front view]



[Side view]



[Left front view]

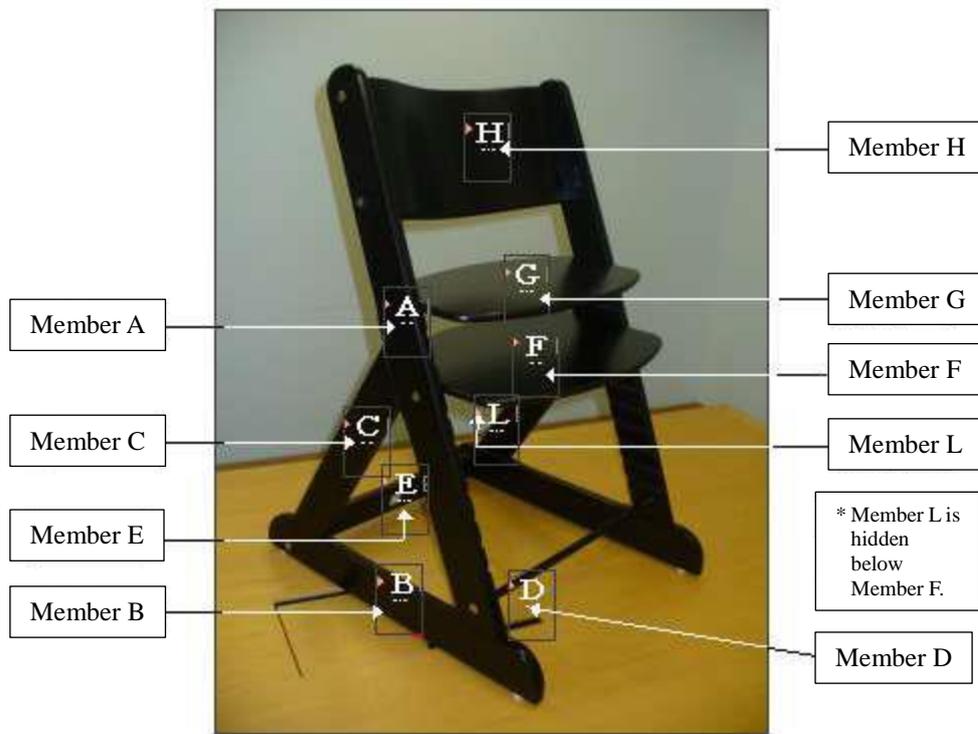


[Front view]



(2) Component parts

The component parts of Appellee's Product 1 are as follows.



(3) Characteristics and shape

A. Materials: Wood (Birch), Member D and Member L are made of metal.

B. Size (approximately): 77.5 cm (height), 45 cm (width), and 55 cm (depth)

C. Color: Black

D. Number of grooves formed on Member A: 12

E. Others: This product comes with a cloth back cover as an accessory.

2. Appellee's Product 2

(1) Photographs

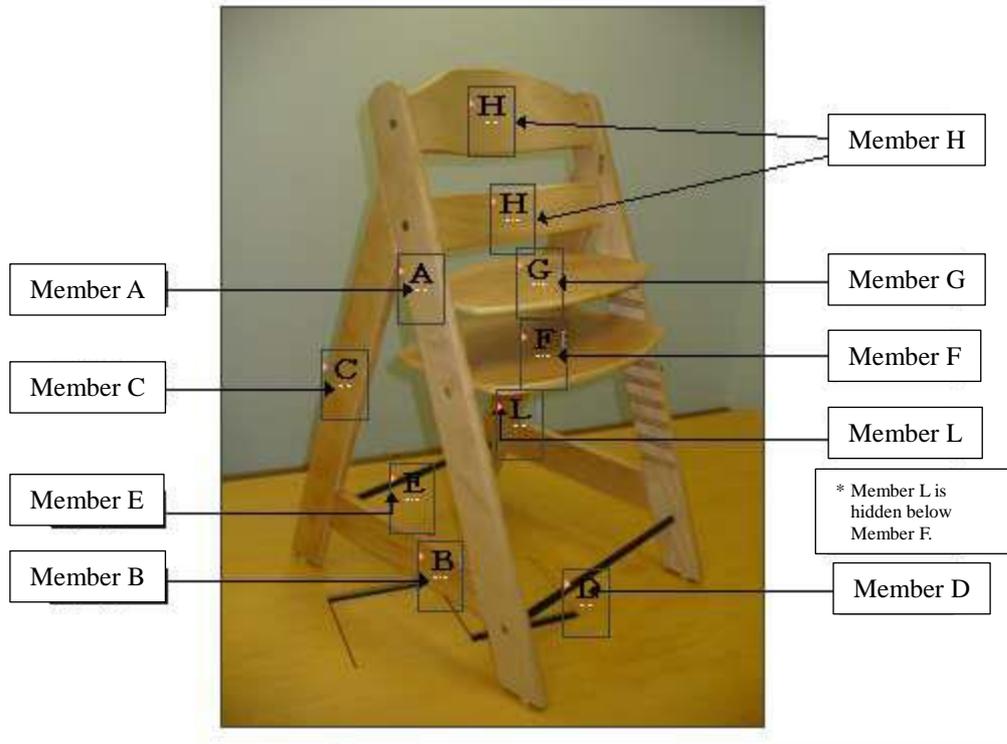


[Front view]



(2) Component parts

The component parts of Appellee's Product 2 are as follows.



(3) Characteristics and shape

A. Materials: Wood (Beech), Member D and Member L are made of metal.

B. Size (approximately): 81.5 cm (height), 45 cm (width), and 55.5 cm (depth)

C. Color: Natural

D. Number of grooves formed on Member A: 10

3. Appellee's Product 3

(1) Photographs

[Right front view]



[Side view]



[Left front view]

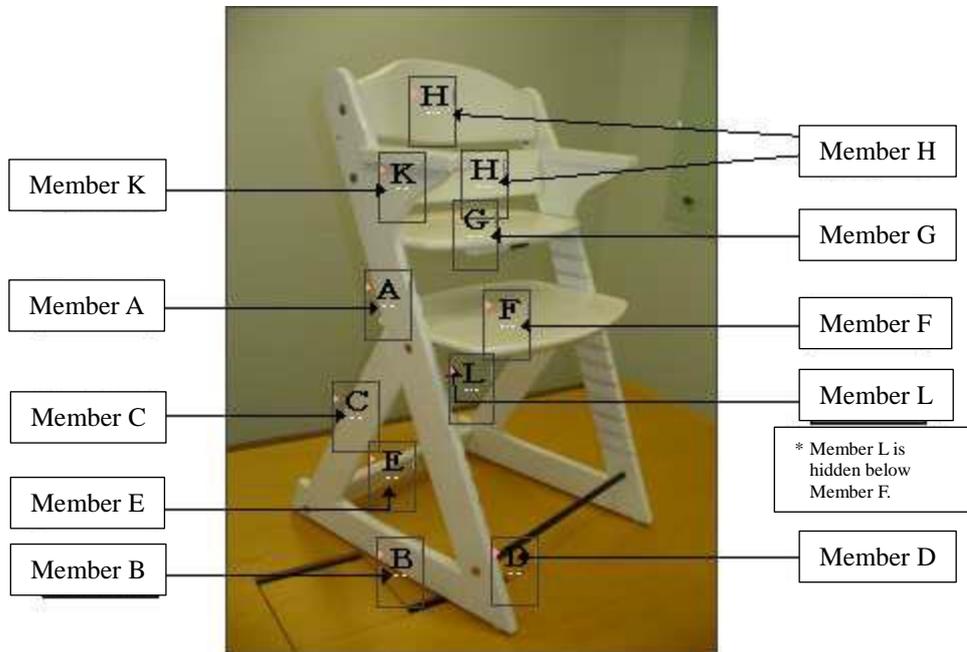


[Front view]



(2) Component parts

The component parts of Appellee's Product 3 are as follows.



Member J is a table shown in the [Side view] and [Left front view] of the photographs presented in (1) above.

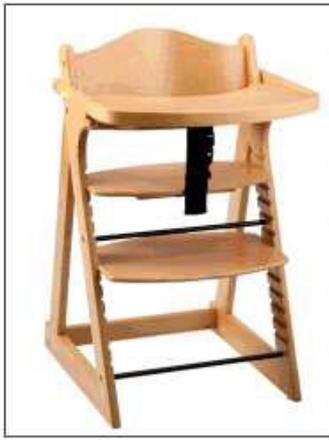
(3) Characteristics and shape

- A. Materials: Wood (Beech), Member D and Member L are made of metal.
- B. Size (approximately): 81.5 cm (height), 49 cm (width), and 60 cm (depth)
- C. Color: White, natural
- D. Number of grooves formed on Member A: 12

4. Appellee's Product 4

(1) Photographs

[Right front view]



[Side view]



[Left front view]

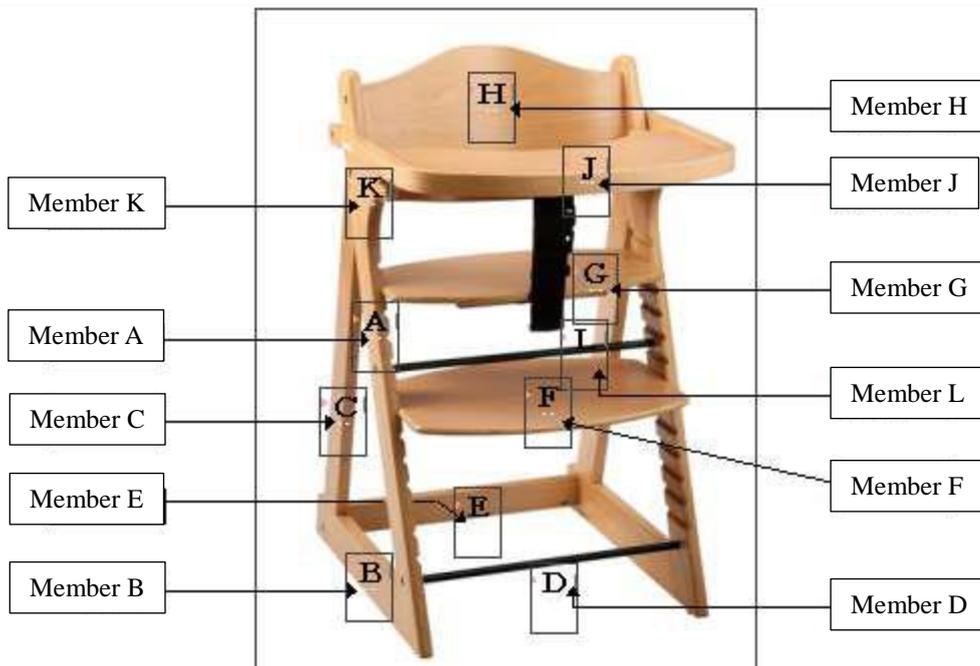


[Front view]



(2) Component parts

The component parts of Appellee's Product 4 are as follows.



(3) Characteristics and shape

- A. Materials: Wood (Beech), Member D and Member L are made of metal.
- B. Size (approximately): 80 cm (height), 49 cm (width), and 60.5 cm (depth)
- C. Color: Natural
- D. Number of grooves formed on Member A: 13

5. Appellee's Product 5

(1) Photographs

[Right front view]



[Side view]

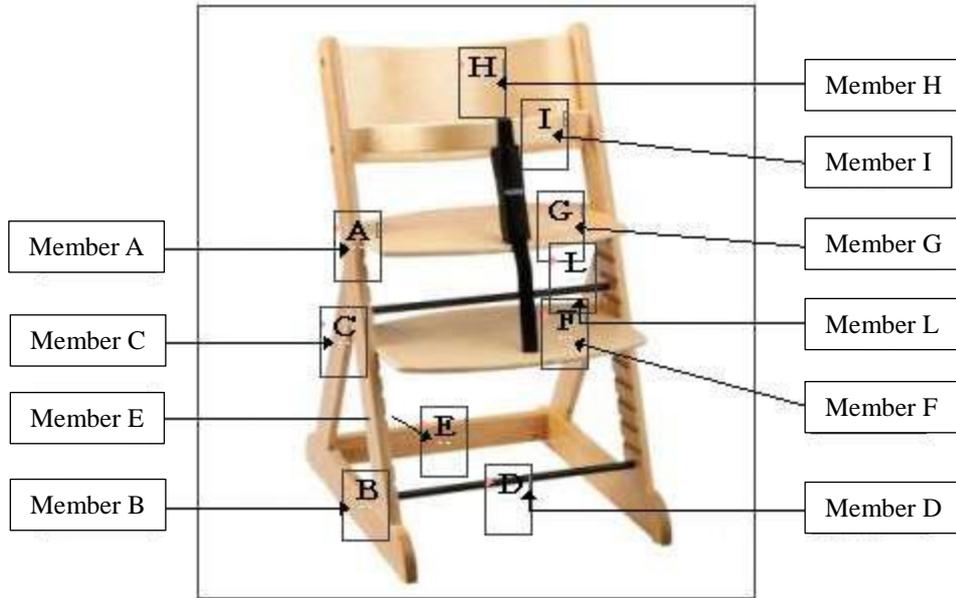


[Front view]



(2) Component parts

The component parts of Appellee's Product 5 are as follows.



(3) Characteristics and shape

- A. Materials: Wood (Beech), Member D and Member L are made of metal.
- B. Size (approximately): 77.5 cm (height), 45 cm (width), and 55 cm (depth)
- C. Color: Natural
- D. Number of grooves formed on Member A: 12

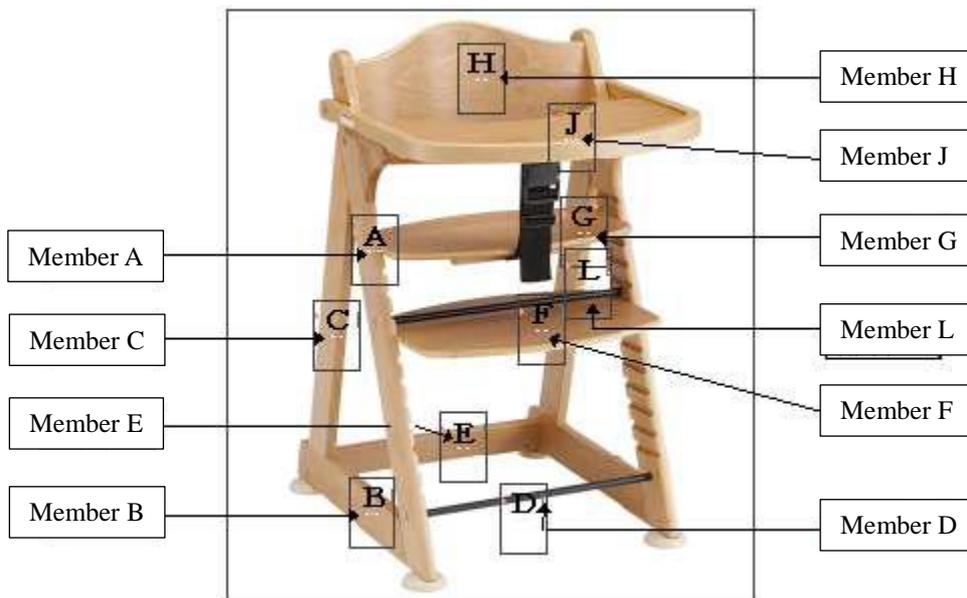
6. Appellee's Product 6

(1) Photographs



(2) Component parts

The component parts of Appellee's Product 6 are as follows.



(3) Characteristics and shape

- A. Materials: Wood (Beech), Member D and Member L are made of metal.
- B. Size (approximately): 80 cm (height), 49 cm (width), and 60.5 cm (depth)
- C. Color: Natural
- D. Number of grooves formed on Member A: 13

E. Others: Four stabilizers are attached to the bottoms of Member A and Member B.

Attachment 4

Calculation Table Concerning the Losses Suffered by the Appellants

	Unit price (yen)	Sales volume (units)	Total (yen) Unit price×Sales volume	Losses suffered by Appellant Opsvik (yen) 4% of the total stated left	Losses suffered by Appellant Stokke (yen) 30% of the total stated left
Appellee's Product 1	7,800	7,200	56,160,000	2,246,400	16,848,000
Appellee's Product 2	5,980	2,400	14,352,000	574,080	4,305,600
Appellee's Product 3	8,980	24,900	223,602,000	8,944,080	67,080,600
Appellee's Product 4	7,800	8,700	67,860,000	2,714,400	20,358,000
Subtotal			361,974,000	(A)14,478,960	(B)108,592,200
Attorneys' fee				1,447,896	10,859,220
Total				15,926,856	119,451,420

Attachment 5

Apology Advertisement

1. Content of the apology

Apology

We are afraid that our company caused great trouble to you by manufacturing and selling products similar to your product (TRIPP TRAPP). Our company's act violated the Copyright Act and the Unfair Competition Prevention Act and constitutes an act of tort specified in the Civil Code. We will immediately stop manufacturing and selling those products. We promise that we will never cause you such trouble as mentioned above and offer sincere apologies.

(Month) (Date), (Year)

C

President

Katoji Co., Ltd.

(omitted) Aichi Prefecture

Mr. A

President

Peter Opsvik AS

(omitted), Norway

Mr. B

President

Stokke AS

(omitted), Norway

2. Size

(1) Size of the advertisement

Two vertical columns, 20 cm in width

(2) Font

Title: 4.5 mm (12 point) block letters

Names of the sender and the receiver: 4.0 mm (11 point) block letters

Text: 3.25 mm (9 point) Ming-style letters

Date and address: 3.0 mm (8 point) Ming-style letters

The publication date of newspaper should be indicated in the empty spaces above.

3. Name of newspaper and the number of times of apology

Name: Advertisement section of the evening paper of Nihon Keizai Shimbun

Number of times of apology: Once