

Date	July 15, 2002	Court	Tokyo District Court, 29th Civil Division
Case number	2001 (Wa) 12318		
– A case in which the court made findings and determinations regarding the phrases "for the purpose of acquiring a wrongful gain" and "for the purpose of causing injury to another person" referred to in Article 2, paragraph (1), item (xii) (currently item (xiii)) of the Unfair Competition Prevention Act.			

References: Article 2, paragraph (1), item (xii) (currently item (xiii)) of the Unfair Competition Prevention Act

Number of related rights, etc.:

Summary of the Judgment

1. Background

The plaintiff is a yugen kaisha (private limited company) established mainly for the purpose of developing, importing, and selling peripheral devices of personal computers and also selling audio products.

The defendant is a company established in the U.S. in March 1998 for the purpose of providing the service of distributing MP3-compressed audio data through the Internet.

The defendant provides the aforementioned music distribution service by using "mp3.com" as the indication of its business (the "defendant's indication") and its mark. The defendant also established a website (the "defendant's site") at "http://www.mp3.com".

The plaintiff registered the domain name "mp3.co.jp" (the "plaintiff's domain name") as of July 16, 1999 with the Japan Network Information Center (the "JPNIC") and obtained approval for Internet connection on December 7, 1999.

After registering the plaintiff's domain name, the plaintiff established a website (the "plaintiff's site") at "http://www.mp3.co.jp".

On March 5, 2001, the defendant filed a request with the Japan Intellectual Property Arbitration Center ("JIPAC") against the plaintiff for dispute resolution by demanding that the plaintiff should register a transfer of the plaintiff's domain name from the plaintiff to the defendant. In response, on May 29, 2001, JIPAC's arbitration panel found as follows: [i] the plaintiff's domain name is so similar to the indication of the defendant's business and the defendant's trademark that it would cause confusion; [ii] the plaintiff does not have any rights or legitimate interests in the plaintiff's domain name; and [iii] the plaintiff's domain name was registered or used for a wrongful

purpose. Based on these findings, JIPAC rendered a decision to the effect that the plaintiff shall transfer the plaintiff's domain name to the defendant.

In this case, the plaintiff seeks a declaratory judgment against the defendant, which claims to have the right to seek an injunction against the plaintiff's use of its domain name under Article 3, paragraph (1) of the Unfair Competition Prevention Act, to the effect that the defendant does not have such right to seek an injunction.

2. Court decision

The major issues of the case include, among others, whether the plaintiff's acquisition, etc. of the plaintiff's domain name constitutes an act of unfair competition under Article 2, paragraph (1), item (xii) (currently item (xiii)) of the Unfair Competition Prevention Act.

In this judgment, the court determined that the plaintiff cannot be found to have acquired, held, or used the plaintiff's domain name "for the purpose of acquiring a wrongful gain, or causing injury to another person," and thus denied the allegation that the plaintiff's acquisition, etc. of the plaintiff's domain name constitutes an act of unfair competition (the plaintiff's claim upheld). Before making this determination, the court stated the following general opinions on this issue.

- The Unfair Competition Prevention Act defines "an act of acquiring...the right to use a domain name that is identical or similar to another person's specific indication of goods or business...for the purpose of acquiring a wrongful gain or causing injury to another person" as an act of unfair competition and prohibits such act as long as the act is committed for self-profiting or other-harming purposes in a subjective manner, with the aim of specifying the scope of the legitimate use, etc. of domain names in consideration of [i] the need to protect the merit of easiness, swiftness, and convenience of the domain name registration system, under which any person can freely register his/her domain name on a first-come, first-served basis, [ii] the need to ensure that companies can freely register domain names for various activities, and [iii] the need to prohibit the acquisition, use, etc. of a domain name if there are special circumstances where the acquisition, use, etc. of the domain name constitutes an abuse.

- On these grounds, the phrase "for the purpose of acquiring a wrongful gain" specified in said item should be interpreted as "for the purpose of wrongfully profiting for oneself in a manner that violates the public policy" and not as including cases where only a minor violation is committed in the course of the acquisition, use, etc. of a domain name. The phrase "(for the purpose of) causing injury to another person" should be interpreted as "for the purpose of causing tangible or intangible damage to

another person such as property damage or collapse of reputation." For example, it could be interpreted as [i] for the purpose of reselling one's own domain name at an illicitly high price, [ii] for the purpose of making wrongful use of another person's customer appeal in the course of conducting one's business, or [iii] for the purpose of posting defamatory comments or indecent information, etc. on the website with said domain name and thereby causing damage to a company that can be associated with the domain name.

Judgment rendered on July 15, 2002

2001 (Wa) 12318 Case of Seeking a Declaratory Judgment for the Nonexistence of the Right to Seek an Injunction against an Act of Unfair Competition

Date of conclusion of oral argument: May 27, 2002

Judgment

Plaintiff: Yugen Kaisha System KJ

Defendant: MP3.com, Inc.

Main text

1. The court handed down a declaratory judgment that the defendant does not have the right to seek an injunction against the plaintiff's use of the domain name "MP3.CO.JP" under Article 3, paragraph (1) of the Unfair Competition Prevention Act.
2. The defendant shall bear the court costs.

Facts and reasons

No. 1 Claims

The same as stated in the main text above.

No. 2 Background

This is a case where the plaintiff, which has registered the domain name, "mp3.co.jp," seeks a declaratory judgment against the defendant, which allegedly has the right to seek an injunction against the plaintiff's use of the domain name "mp3.co.jp" under Article 3, paragraph (1) of the Unfair Competition Prevention Act (the "Act"), to the effect that the defendant does not have the right to seek an injunction.

1. Undisputed facts, etc.

(1) The plaintiff is a yugen kaisha (private limited company) established mainly for the purpose of developing, importing, and selling peripheral devices of personal computers and also selling audio products.

(2) The defendant is a company established in the U.S. in March 1998 for the purpose of providing the service of distributing MP3-compressed audio data through the Internet.

The defendant provides the aforementioned music distribution service by using "mp3.com" as the indication of its business (the "defendant's indication") and its mark. The defendant also established a website (the "defendant's site") at <http://www.mp3.com>.

(3) The plaintiff registered the domain name "mp3.co.jp" (the "plaintiff's domain name") as of July 16, 1999 with the Japan Network Information Center (the "JPNIC") and obtained approval for Internet connection on December 7, 1999.

After registering the plaintiff's domain name, the plaintiff established a website (the "plaintiff's site") at <http://www.mp3.co.jp>.

(4) On March 5, 2001, the defendant filed a request with the Japan Intellectual Property Arbitration Center ("JIPAC") against the plaintiff for dispute resolution by demanding that the plaintiff should register a transfer of the plaintiff's domain name from the plaintiff to the defendant. In response, on May 29, 2001, JIPAC's arbitration panel found as follows: [i] the plaintiff's domain name is so similar to the indication of the defendant's business and the defendant's trademark that it would cause confusion; [ii] the plaintiff does not have any rights or legitimate interests in the plaintiff's domain name; and [iii] the plaintiff's domain name was registered or used for a wrongful purpose. Based on these findings, JIPAC rendered a decision to the effect that the plaintiff shall transfer the plaintiff's domain name to the defendant (Exhibit Ko 1).

2. Issues

(1) Issue of whether the act of holding, using, or otherwise handling the plaintiff's domain name constitutes an act of unfair competition specified in Article 2, paragraph (1), item (xii) of the Act

In other words,

A. the issue of whether the plaintiff can be considered to have "the purpose of acquiring a wrongful gain" or "the purpose of causing injury to another person"

B. the issue of whether the plaintiff's domain name ("mp3.co.jp") is similar to the defendant's indication ("mp3.com")

(2) Issue of whether the plaintiff's act of using the plaintiff's domain name constitutes an act of unfair competition under Article 2, paragraph (1), item (i) or (ii) of the Act

In other words,

A. the issue of whether the plaintiff uses the plaintiff's domain name as an "indication of goods or business" specified in Article 2, paragraph (1), item (i) or (ii) of the Act

B. the issue of whether the defendant's indication is famous or well known

C. the issue of whether the plaintiff's domain name is similar to the defendant's indication and could cause confusion

D. the issue of whether the plaintiff's domain name can be regarded as a "generic term for business" specified in Article 12, paragraph (1), item (i) of the Act

(omitted)

No. 3 Court Decision

1. Issue (1) A (the issue of whether the plaintiff can be considered to have "the purpose

of acquiring a wrongful gain" or "the purpose of causing injury to another person")

(omitted)

(2) Decision

Based on the facts found above, the issue of whether the plaintiff can be considered to have "the purpose of acquiring a wrongful gain" or "the purpose of causing injury to another person" is examined below.

A. Meanings of the phrases "for the purpose of acquiring a wrongful gain" and "the purpose of causing injury to another person"

The term "domain name" means letters, numbers, signs, or other symbols or combination thereof that correspond to the combination of numbers, signs, letters assigned to identify individual computers on the Internet (Article 2, paragraph (7) of the Act).

In principle, the domain name registration system allows any person to freely register his/her domain name on a first-come, first-served basis. At the time of registration, no examination is conducted as to whether the domain name infringes any existing trademark or indication of goods or business. The system was established to ensure broad use of the Internet by many people for various activities. Since a domain name is an Internet address, it would not cause any problem even if the domain name is a meaningless combination of figures, characters, etc.

However, in reality, many domain names contain characters, etc. with some meanings, such as the name of the registrant and the name of its goods or services. When a company uses its website in order to advertise its products and promote sales, etc., its domain name often contains the characters indicating the company's name, goods, etc. at the third level of the domain. When users select goods or services, purchase goods, and receive services based on the information on the website, if the domain name contains the name of a certain company or goods, the users usually associate the name of the company, goods, etc. indicated in the domain name with the company, goods, etc. In light of these social and economic functions of a domain name, it can be said that the economic value of a domain name is extremely high for companies that are trying to conduct their business more effectively. For this reason, there has been a clear trend among companies toward obtaining a domain name consisting of the shortest possible character string that contains the company's name or goods (according to the entire import of oral argument).

Meanwhile, the domain name must be unique throughout the world in order to

identify each computer. As mentioned above, the current domain system was established based on the principle that any person can freely register his/her domain name on a first-come, first-served basis. As a result, there have been many cases where a third party abuses or makes wrongful use of this principle and registers a domain name containing, at the third level of the domain, a character string that is identical or similar to another person's indication of goods or business (according to the entire import of oral argument).

In light of these facts mentioned above, it can be understood that the Unfair Competition Prevention Act finds "an act of acquiring (omitted) the right to use a domain name that is identical or similar to another person's specific indication of goods or business (omitted) for the purpose of acquiring a wrongful gain or causing injury to another person" as an act of unfair competition and prohibits such act as long as the act is committed for self-profiting or other-harming purposes in a subjective manner with the aim of specifying the scope of the legitimate use, etc. of domain names in consideration of [i] the need to protect the merit of easiness, swiftness, and convenience of the domain name registration system, under which any person can freely register his/her domain name on a first-come, first-served basis, [ii] the need to ensure that companies can freely register domain names for various activities, and [iii] the need to prohibit the acquisition, use, etc. of a domain name if there are special circumstances where the acquisition, use, etc. of the domain name constitutes an abuse.

On these grounds, the phrase "for the purpose of acquiring a wrongful gain" specified in said item should be interpreted as "for the purpose of wrongfully profiting for oneself in a manner that violates the public policy" and not as including cases where only a minor violation is committed in the course of the acquisition, use, etc. of a domain name. The phrase "(for the purpose of) causing injury to another person" should be interpreted as "for the purpose of causing tangible or intangible damage to another person such as property damage or collapse of reputation." For example, it could be interpreted as [i] for the purpose of reselling one's own domain name at an illicitly high price, [ii] for the purpose of making wrongful use of another person's customer appeal in the course of conducting one's business, or [iii] for the purpose of posting defamatory comments or indecent information, etc. on the website with said domain name and thereby causing damage to a company that can be associated with the domain name.

B. Issue of whether the plaintiff had the "purpose of acquiring a wrongful gain"

(A) Issue of whether the plaintiff obtained the right to use the plaintiff's domain name for the purpose of acquiring a wrongful gain

As found in (1) above, prior to the establishment of the plaintiff, P came up with the

idea that the domain name of the plaintiff should be "mp3.co.jp." However, since it was prohibited to register a domain name before the establishment of a company, P agreed with Zeneraru Shoji that the aforementioned domain name should be registered in the name of Zeneraru Shoji for the plaintiff to be established in the future and that the acquired domain name should be transferred to the plaintiff after the establishment of the plaintiff. Based on this agreement, Zeneraru Shoji registered the domain name in March 1998. However, the defendant was also established in March 1998. In light of these facts described above, it is clear that, as of the time when P came up with the idea of registering the plaintiff's domain name for the plaintiff, or even as of March 1998, when Zeneraru Shoji filed an application for registration of the plaintiff's domain name, the plaintiff (strictly speaking, the individual, P, because the plaintiff had not been established yet) did not register the plaintiff's domain name for the purpose of acquiring a wrongful gain by selling it to the defendant at an illicitly high price or making wrongful use of the customer appeal of the defendant's indication in the course of conducting the plaintiff's business.

Subsequently, by April 1999, when the plaintiff filed an application for registration of the plaintiff's domain name, the defendant had expanded its music distribution business worldwide. In view of the facts that, as of March 1999, a total of 1,348,570 people in Japan viewed the defendant's site, that the book titled "Dejitaru shin sedai MP3" (Digital new generation MP3) published in November 10, 1998 contained an article about the defendant, and that, according to the results of a survey about the popularity of websites conducted by The Nikkei, which solicited votes from NIKKEI NET readers from June 25 to July 25, 1999, the defendant's site was ranked sixth in the category "websites to enjoy music." On these grounds, it can be found that, as of July 1999, when the plaintiff registered the plaintiff's domain name, the defendant's business was widely known in Japan.

However, as described above, as of the time when the plaintiff requested Zeneraru Shoji to register the plaintiff's domain name (March 1998), the plaintiff did not intend to acquire a wrongful gain such as selling its own domain name at an illicitly high price or making wrongful use of the customer appeal of the defendant's indication in the course of conducting the plaintiff's business. Moreover, while the plaintiff subsequently registered the plaintiff's domain name in July 1999 as described above, the registration had been scheduled since before this time. In light of these facts described above, even if the defendant's business had become well known by the time of said registration, it does not provide grounds to prove that, by July 1999, the plaintiff subsequently came to have the aforementioned purpose of acquiring a wrongful gain.

Thus, as of July 1999, when the plaintiff registered the plaintiff's domain name, it cannot be found that the plaintiff intended to acquire a wrongful gain such as selling its own domain name at an illicitly high price or making wrongful use of the customer appeal of the defendant's indication in the course of conducting the plaintiff's business.

(B) Issue of whether the plaintiff intended to acquire a wrongful gain by holding and using the plaintiff's domain name

a. As mentioned above, since the plaintiff's registration of the plaintiff's domain name, the access from Japan to the defendant's site has been on the rise. The number of hits reached 9,383,817 in October 1999 and 9,482,539 in November 1999. In February 2001, the defendant requested P to assign the plaintiff's domain name to the defendant at a price equivalent to the registration cost. P replied to the defendant that the plaintiff's domain name cannot be assigned to the defendant at a price equivalent to the registration cost and that the only option would be joint commencement of business by the plaintiff and the defendant by using the domain name for the Japanese version of the defendant's site. It can be found that the plaintiff has not been using the plaintiff's site in substance.

b. First of all, based on the aforementioned course of negotiations for assignment of the plaintiff's domain name, the defendant alleged that the plaintiff can be presumed to have a purpose of acquiring a wrongful gain, e.g., forcefully proposing to the defendant joint operation of the Japanese version of the defendant's site.

However, even if the plaintiff proposes to the defendant joint operation of the Japanese version of the defendant's site, the defendant could simply reject the proposal if the proposal is against the intention of the defendant (such rejection would not inconvenience the defendant in any way). Therefore, the plaintiff's proposal for joint operation of the defendant's site would not provide grounds for the defendant's allegation that the plaintiff forcefully proposed joint operation of the Japanese version of the defendant's site for the purpose of acquiring a wrongful gain.

c. Next, the defendant alleged that, in light of the fact that the plaintiff rejected the defendant's request for assignment, the plaintiff had a wrongful purpose of forcing the defendant to pay an illicitly high price for assignment of the plaintiff's domain name.

However, such allegation of the defendant is unacceptable.

According to the evidence (Exhibits Ko 11 to 15, 22, 51, Exhibits Otsu 3 to 5) and the entire import of oral argument, the following facts can be found: as a result of an increase in the number of people who listen to MP3-compressed music using MP3 players and Internet distribution of MP3-compressed music, the market for MP3-related goods and services has been and will be expanding; since MP3-compressed music is

often distributed through the Internet, any company providing MP3-related goods or services or advertising such products or services on its website could benefit from acquiring the domain name containing the character string "mp3" in order to improve the efficiency of its business; in particular, since a short domain name is more effective, it would be extremely beneficial for the aforementioned company to use the character string "mp3" at the third-level domain; and since each domain name is unique throughout the world, a domain name identical to the plaintiff's domain name cannot be registered by any other party. Given these facts, the plaintiff's domain name can be found to have a considerably high property value for any person who is or will be engaged in MP3-related business. Furthermore, the plaintiff is a yugen kaisha (private limited company) developing, importing, and selling computer peripheral devices and audio products, and the scope of business of the plaintiff includes provision of telecommunications services for individuals and companies through the Internet, development, import, and sale of computer peripheral devices, development and sale of computer software products, and sale of audio products, etc. Moreover, the plaintiff had developed "an extremely small portable MP3 player with voice memo and telephone directory functions" and posted information about the device on the plaintiff's site. Accordingly, the plaintiff, which is currently not using the plaintiff's site in substance, is highly likely to conduct MP3-related business and use the plaintiff's site for its own business. Therefore, it can be found that, from the viewpoint of the plaintiff, the value of the plaintiff's domain name is much higher than the amount equivalent to its registration cost.

On these grounds, in consideration of the property value of the plaintiff's domain name, it was reasonable for the plaintiff to reject the defendant's request for assignment of the plaintiff's domain name at the price equivalent to the registration cost. The fact that the plaintiff did not assign the plaintiff's domain name to the defendant at a price equivalent to the registration cost does not provide grounds for the defendant's allegation that the plaintiff had the purpose of forcing the defendant to pay an illicitly high price for assignment of the plaintiff's domain name.

Furthermore, the plaintiff did not take any wrongful action such as posting comments defamatory to the defendant on the plaintiff's site in order to force the defendant to purchase the plaintiff's domain name at an illicitly high price. None of the evidence suggests that the plaintiff had a purpose of acquiring a wrongful gain, e.g., forcing the defendant to purchase the plaintiff's domain name at an illicitly high price and making wrongful use of the customer appeal of the defendant's indication in the course of conducting the plaintiff's business.

d. Therefore, the plaintiff cannot be found to hold or use the plaintiff's domain name for the purpose of acquiring a wrongful gain.

(C) Also, the defendant alleged that the plaintiff does not have legitimate interests in the plaintiff's domain name on the grounds that the plaintiff violates Article 9, paragraph (1) of the JPNIC "Registration Rules for Organizational Type and Geographic Type JP Domain Names," which specifies the principle of a single domain for a single organization.

However, the defendant's allegation is groundless as explained below. As found in A. above, the phrase "for the purpose of acquiring a wrongful gain" specified in Article 2, paragraph (1), item (xii) of the Act should be interpreted as applicable only to the cases where the manner of seeking a gain is against the public policy. Since Article 4, item (a) of the JP Domain Name Dispute Resolution Policy of JPNIC specifies that the mere fact that "the registrant has no relevant rights or legitimate interests in respect of the domain name" would not satisfy the requirements for transfer or cancellation of the registered domain name, it is impossible to interpret that the plaintiff has a "purpose of acquiring a wrongful gain" even if the aforementioned facts alleged by the defendant can be proven.

Therefore, even if the defendant's aforementioned allegations are taken into consideration, the plaintiff cannot be considered to have "the purpose of acquiring a wrongful gain."

(D) Thus, the plaintiff cannot be considered to have obtained, held, and used the plaintiff's domain name "for the purpose of acquiring a wrongful gain."

C. Issue of whether the plaintiff had the purpose of causing injury to another person

(A) Since the plaintiff registered the plaintiff's domain name, the plaintiff has not posted any comments defamatory to the defendant or indecent information on the plaintiff's site. The only information posted by the plaintiff was as found in (1) above.

Moreover, none of the evidence suggests that the plaintiff had a purpose of causing damage to the defendant in any way other than posting comments, etc. defamatory to the defendant on the plaintiff's site.

Therefore, the plaintiff cannot be found to have acquired or held the right to use the plaintiff's domain name or used the domain name "for the purpose of causing injury to another person."

(B) Regarding this point, the defendant alleged that any person who views the plaintiff's site would misunderstand that there is a dispute between the defendant and GNN and that such misunderstanding would greatly damage the defendant's reputation on the following grounds: the plaintiff's site currently shows the statement "We are in dispute with mp3.com"; it is unclear who posted that statement on the site; GNN's logo shown

at the corner of the plaintiff's site is linked to GNN's website; the plaintiff's site indicates its mail address simply as "info@gnn.co.jp" without indicating the name of the plaintiff. As found in (1) B. (D) above, the aforementioned facts alleged by the defendant about the plaintiff's site can be found to be true.

However, the aforementioned defendant's allegations are groundless for the following reasons. As found in (1) B. (D), the plaintiff posted the statement that "This website has no connection with mp3.com. Currently, we are making preparations for conducting MP3-related business in Japan. We are not in a position to answer any questions about mp3.com. We are in dispute with mp3.com. We appreciate all of your kind e-mails and messages regarding this matter. From late September 2000, as a preliminary measure against CODE RED and NIMDA Worm, the server related to this site was temporarily suspended. Since we prioritized the implementation of this measure for our customer server, the resumption of this site took a long time. We apologize for any inconvenience caused to you. Our web services were suspended from January 7 to 13, 2001 due to the server relocation." According to the entire import of oral argument, the purpose of this statement can be presumed to clarify the fact that the plaintiff's site has no connection with the defendant or the defendant's site and to explain the reasons for the closure of the plaintiff's site after the commencement of a dispute between the plaintiff and the defendant, during which the defendant alleged that the plaintiff's site would cause confusion with the defendant and the defendant's site and that the plaintiff had not been using the plaintiff's site. It is clear that the phrase "We are in dispute with mp3.com" included in the aforementioned statement posted on the plaintiff's site precisely indicates, if combined with the preceding phrase "This website has no connection with mp3.com," that the entity that established the plaintiff's site is in dispute with the defendant. Even if it is true that the plaintiff's site does not clearly indicate who established the plaintiff's site, given that GNN's logo is shown at the corner of the plaintiff's site with a link to GNN's website, and that the plaintiff's site indicates "infor@gnn.co.jp" as the plaintiff's e-mail address, these facts would only lead viewers of the plaintiff's site to recognize a certain relationship between the plaintiff's site and GNN, but would not lead them to misunderstand GNN as the entity that established the plaintiff's site. Based on a comprehensive evaluation of the aforementioned findings and the reasons for posting the aforementioned statement on the plaintiff's site, the plaintiff cannot be found to have intentionally made it difficult to identify those involved in the dispute for the purpose of causing misunderstanding that GNN is in dispute with the defendant.

Therefore, the aforementioned statement posted on the plaintiff's site has revealed

that the plaintiff did not intend to damage the defendant's reputation by causing misunderstanding to the viewers of the plaintiff's site to the effect that GNN is in dispute with the defendant. Therefore, the aforementioned defendant's allegation is groundless.

D. On these grounds, the plaintiff cannot be found to have acquired, held, or used the plaintiff's domain name "for the purpose of acquiring a wrongful gain, or causing injury to another person."

2. Issue (2) A. (the issue of whether the plaintiff's domain name was used as an "indication of goods or business" of the plaintiff)

As described above, since a domain name is merely an address on the Internet, even if any person sells goods or provides services on a website, it does not constitute the use of the domain name as an "indication of goods or business."

On the other hand, it is common that a domain name includes, as the third-level domain, a character string identical with the indication of goods or business of the entity that registered said domain name and established the website. In many cases, viewers of the website are presumed to associate the domain name with the registrant of the domain name. In addition, in the case of a website that uses the domain name, whether in whole or in part, to present information on the sale of goods or the provision of services, the domain name sometimes has the function of identifying the source of goods or services presented on the website. Under these circumstances, a domain name could be interpreted to be used as an "indication of goods or business" specified in Article 2, paragraph (1), items (i) and (ii) of the Act in some cases.

An examination of the information posted on the plaintiff's site has revealed that, as found above, while the plaintiff had posted information about "an extremely small portable MP3 player with the voice memo and telephone directory functions" on the plaintiff's site, the evidence cannot prove that the plaintiff posted a character string indicating the plaintiff's domain name on the plaintiff's site at that time. Since then, the plaintiff has not posted any information about the sale of goods or the provision of services on the plaintiff's site.

Therefore, the plaintiff's domain name cannot be considered to have been used as an "indication of goods or business" specified in Article 2, paragraph (1), items (i) and (ii) of the Act.

3. As described above, without needing to examine any other factors, the plaintiff cannot be considered to have committed an act of unfair competition specified in Article 2, paragraph (1), items (i), (ii), and (xii) of the Act. Since the plaintiff is not likely to commit an act of unfair competition in light of the background circumstances, it is

impossible to find that the defendant has the right to seek an injunction under Article 3, paragraph (1) of the Act.

Thus, the court has found the plaintiff's claim in this action acceptable and rendered this judgment in the form of the main text.

Tokyo District Court, 29th Civil Division

Presiding judge: IIMURA Toshiaki

Judge: ENOKIDO Michinari

Judge: SANO Makoto