

Date	October 16, 2013	Court	Intellectual Property High Court, Third Division
Case number	2013 (Ne) 10052		
– A case in which the court upheld the judgment in prior instance to the effect that the act of placing photographs of the members of an idol group in books without their permission constitutes infringement of the publicity rights and is illegal under tort law.			

References: Article 709 of the Civil Code and Article 13 of the Constitution of Japan

The appellees, who belong to an idol group, asserted that the appellant published and sold books (12 books in total; the "Books") in which many photographs of the appellees (the "Photographs") are placed and thereby infringed the appellees' right to exclusively use the power of their portraits to attract consumers, etc. (publicity rights) as well as the moral interests, that is, the right to ensure that photographs of their appearances are not recklessly published. Based on this assertion, the appellees respectively filed this action against the appellant to seek payment of damages in tort with delay damages accrued thereon, as well as injunction against the publication and sale of the Books and destruction of the Books based on either one of the aforementioned infringements.

In the judgment in prior instance, the court ruled that the appellant's act of placing the Photographs in the Books constitutes infringement of the appellees' publicity rights. Based on this ruling, the court upheld the appellees' claims to the extent that it orders the appellant to pay part of the damages and delay damages claimed by the appellees, cease to publish and sell the Books, and destroy the Books. Therefore, the appellant appealed against the judgment in relation to the part against the appellant.

In this judgment, as with the judgment in prior instance, the court ruled that even if columns and other texts are placed in the Books, in light of such circumstances as the number of the Photographs, the manner in which they are handled, and connections between the Photographs and the columns, it is possible to say that the Photographs are placed in the Books for the purpose of independently using the appellees' portraits, etc. themselves as goods, etc. subject to appreciation, and solely for the purpose of utilizing the power of the aforementioned appellees' portraits, etc. to attract consumers. Based on this ruling, the court found that the appellant's act constitutes infringement of publicity rights.

Based on this finding, the court upheld the judgment in prior instance in that it ordered the appellant to pay part of the damages and delay damages claimed by the appellees, cease to publish and sell the Books, and destroy the Books.