

Date	August 22, 2013	Court	Osaka District Court, 26th Civil Division
Case number	2012 (Wa) 6771		
– A case in which the court denied similarity between the roof of the defendant's product (tomb) and the registered design to tomb roofs.			

1. The plaintiff holds the design right for the design designating "tortoiseshell-shaped tomb roof" as an article to the design (the "Design").

Based on the design right in question (the "Design Right"), the plaintiff sued the defendant, seeking an injunction against the defendant's manufacture, sale, etc., demanding disposal of the roof part of the defendant's product (tomb), and claiming damages.

2. The major issues are [i] the similarity between the structure of the roof part of the defendant's product (the defendant's design) and the Design, and [ii] whether the Design lacks novelty.

3. In this judgment, the court denied similarity concerning issue [i] and dismissed all of the plaintiff's claims. The outline of the reasons therefor is as follows.

(1) Whether the Design is similar to any other design or not should be determined based on the aesthetic impressions that the respective designs would create through the eyes of consumers.

A determination on this point should be made by taking into account the nature, usage, and use conditions of the article to the design and whether the design has any novel creative part that cannot be found in publicly known designs, and by first ascertaining the part especially attracting consumer's attention as the essential feature for each design, then examining mainly whether both designs share the structural conditions in their essential features, and finally determining whether they share aesthetic impressions as a whole.

(2) The structure which the Design and the defendant's design share in common is the structure that tortoiseshell-shaped tomb roofs generally have, but even within the scope of such structure, there is a clear difference between the Design and the defendant's design.

Looking at the difference, the defendant's design does not have the essential feature of the Design (which makes the difference between the Design and publicly known designs).

It cannot be said that both designs share the structural conditions in their essential features in common.

In the nature of the article to the design, the design from the front view attracts

consumers' attention to a considerable degree and significantly affects the aesthetic impressions of the design as a whole. In this respect, aesthetic impressions from the front view are different between the Design and the defendant's design at first glance.

Therefore, it cannot be said that both designs share the structural conditions in the essential features in common nor can it be said that both designs share aesthetic impressions as a whole in common.

4. Incidentally, the plaintiff had made the same claims as in this case against another defendant (Osaka District Court, 2012 (Wa) 6772), but these claims were dismissed for the same reasons on the same day as this judgment.