

Decided on	March 27, 2008	Court	Intellectual Property High Court, Third Division
Case number	2007 (Ne) 10095		
<p>A case in which the court accepted the requests for confirmation of ownership of a copyright and procedures for deregistration of the said copyright, which were lodged by X, who obtained the copyright in question through transfer from its principal transferee, against Y, the second transferee and a registered holder of the said copyright, holding that the contract for the transfer of the said copyright from the original copyright holder to Y had not been completed or is deemed invalid because of misrepresentation, and even if the transfer to Y had taken place, Y acted in bad faith</p>			

Reference: Article 77 of the Copyright Act

In this case, X brought an action against Y to confirm X's ownership of the copyright in question, and as a request for elimination of interference based on the copyright in question, demanded that procedures be taken to register the copyright transfer with the statement of claim being the recovery of X's genuine registered ownership of the works in question, which was the principal claim, and demanded that procedures be taken for cancelling the registration of transfer in connection with the said copyright in which the registered person is Y, which was the conjunctive claim.

In the judgment in prior instance, all claims by X were dismissed under the findings and determination that: (1) transfer of the copyright in question to the principal transferee and its transfer to Y as the second transferee were in a relationship of double transfer, and the principal transferee or the person to whom the copyright was transferred from the principal transferee (X) is competitive to Y, and therefore, Y falls under a legally interested third party who may assert a lack of requirement to duly assert against third parties (Article 77 of the Copyright Act) with regard to the transfer of the copyright in question to X; (2) X has not completed the registration concerning the transfer of the copyright in question, whereas X may not assert the transfer of the copyright in question against Y unless X has completed the registration concerning the transfer of the copyright in question (requirement to duly assert against third parties); (3) because Y has completed the registration of transfer concerning the transfer of the copyright in question, transfer of the said copyright to Y has become valid, which is final and binding, and X has lost the copyright in question; (4) Y cannot be deemed to be a disloyal person with bad faith; and others.

In this instance, the court changed the judgment in prior instance and accepted X's

requests for confirmation of its ownership of the copyright in question and procedures for deregistration of the said copyright under the findings and determination that: whereas the copyright in question was transferred to X via the principal transferee, the copyright in question has not been transferred to Y because the contract for the transfer of the said copyright has not been completed between the original copyright holder and Y or is deemed invalid because of misrepresentation, and at least, Y is deemed to have acted in bad faith, and therefore, Y is not deemed to be a legally interested third party who may assert the lack of requirement to duly assert against third parties prescribed in Article 77 of the Copyright Act with regard to transfer of the copyright in question to X. In this instance, the court rejected X's request for procedures for registering the copyright transfer with the statement of claim being the recovery of X's genuine registered ownership, holding that the said request itself is unjust because whereas a right to request a registration that is different from the substantive process of a change in rights is not generated naturally, X does not assert or prove that there is an approval from the original copyright holder and principal transferee.