

Date	July 21, 2011	Court	Intellectual Property High Court, Fourth Division
Case number	2011 (Ne) 10023		
<p>– A case in which the plaintiff (appellee) asserted that the defendants (appellants) acquired the plaintiff's trade secrets concerning aluminum shutter manufacturing process, etc. by a wrongful means (Article 2, paragraph (1), item (iv) of the Unfair Competition Prevention Act) or used it for the purpose of acquiring a wrongful gain (item (vii) of said paragraph); based on this assertion, the plaintiff sought an injunction against the defendants' manufacturing and sale of the relevant shutter and damages; the court ruled as follows: information that can be easily acquired from a product in the marketplace cannot be regarded as information that is "not publicly known" (paragraph (6) of said Article); auxiliary parts used in assembling the relevant shutter are those that are easily replicable by examining the relevant shutter itself by using a general technical means; therefore, information concerning said parts, which the defendants (appellants) were delivered by the plaintiff (appellee), cannot be regarded as information that is "not publicly known"; consequently, the information cannot be regarded as falling under "trade secrets" (said paragraph).</p>			

References: Article 2, paragraph (6) of the Unfair Competition Prevention Act

(Background)

Defendant 1 (appellant) had sold Company A's aluminum shutter (daylighting and ventilation shutter) for some time. However, as delivery of the products from Company A fell into arrears, Defendant 1 came to manufacture a portion of the daylighting and ventilation shutter sold by itself after consultation with Company A. Around the middle of July 2006, Defendant 1 concluded the manufacturing and sales contract in question (the "Manufacturing and Sales Contract") with Company A and Company B, which received the transfer of business from Company A. The Manufacturing and Sales Contract was terminated on September 7 of the same year. However, Defendant 1 and Defendant 2 (appellant), which was newly established, manufacture and sell the shutter that is almost identical with the daylighting and ventilation shutter.

Therefore, the plaintiff (appellee) who took over the business from Company B filed this action to seek an injunction against manufacturing and sale of the shutter by Defendants 1 and 2 as well as damages of 60,900,000 yen, etc. The plaintiff asserts that Defendants 1 and 2 acquired trade secrets concerning the elements and parts, etc. of the daylighting and ventilation shutter and manufacturing process thereof, which were disclosed to Defendant 1 by Companies A and B, by a wrongful means (Article 2, paragraph (1), item (iv) of the Unfair Competition Prevention Act) or that the

aforementioned manufacturing and sale by Defendants 1 and 2 constitutes use of the aforementioned trade secrets for the purpose of acquiring a wrongful gain (item (vii) of said paragraph), etc.

(Determination in the judgment in prior instance)

In the judgment in prior instance (judgment of the Tokyo District Court; 2008 (Wa) 34931; February 3, 2011), the court found that Company A delivered to Defendant 1 drawings, etc. concerning the elements (Information 1) and parts (Information 2) of the daylighting and ventilation shutter. Then, the court held as follows: Taking into account that these drawings are made with a precision of 0.1 millimeter, it is not at all easy to accurately understand the shape of these elements and parts from the product of the daylighting and ventilation shutter and make the drawings thereof, and it is impossible to say that the information described in these drawings is publicly known even if the daylighting and ventilation shutter is distributed in the market; therefore, the information falls under the "trade secrets" set forth in Article 2, paragraph (6) of the Unfair Competition Prevention Act. The court then determined that the manufacturing and sale of the shutter by Defendants 1 and 2 falls under the use of the trade secrets for the purpose of acquiring a wrongful gain as set forth in paragraph (2), item (vii) of said Article. Based thereon, the court granted an injunction against manufacturing and sale of the shutter by Defendants 1 and 2 and also ordered them to pay damages of 31,956,581 yen, etc.

(Determination in this judgment)

In this judgment, the court found that only drawings, etc. concerning Information 2 had been delivered to Defendant 1. The court then held as follows: Information that can be easily acquired from a product in the marketplace cannot be regarded as one that is "not publicly known" as prescribed in Article 2, paragraph (6) of the Unfair Competition Prevention Act; all the parts pertaining to Information 2 are auxiliary parts that are used in assembling the daylighting and ventilation shutter and are those that are easily replicable by examining the shutter itself by using a general technical means; therefore, Information 2 cannot be regarded as one that is "not publicly known."

Based on the above, the court ruled that the plaintiff's assertion lacks grounds as long as the information disclosed to Defendant 1 cannot be regarded as falling under the "trade secret" as mentioned in Article 2, paragraph (6) of the Unfair Competition Prevention Act. Based on this ruling, the court revoked the part of the judgment in prior instance for which Defendants 1 and 2 lost the case, and dismissed all of the plaintiff's claims.

Judgment rendered on July 21, 2011, the original received on the same date, court clerk 2011 (Ne) 10023 Appeal Case of Demanding Payment of Damages, etc.

Court of prior instance: Tokyo District Court 2008 (Wa) 34931

Date of conclusion of oral argument: June 30, 2011

Judgment

Appellant: Kabushiki Kaisha Yume Kobo

Appellant: Kabushiki Kaisha Alumi Kobo

Appellee: Kabushiki Kaisha Touei

Main text

1. The judgment in prior instance with respect to the parts for which the appellants lost the case shall be revoked.
2. All of the appellee's claims with regard to the aforementioned parts shall be dismissed.
3. The appellee shall bear the court costs for both the first instance and the second instance.

Facts and reasons

No. 1 Objects of the appeal

The same as stated in the main text above.

No. 2 Outline of the case

1. In this case, the appellee, who is engaged in the manufacturing and sale of aluminum shutters, alleged that the appellants' act of manufacturing and selling shutters that have the same configuration as that of the aforementioned appellee's shutters by wrongfully obtaining and using trade secrets concerning the manufacturing of the shutters or by using the trade secrets disclosed to them for the purpose of acquiring a wrongful gain constitutes an act of unfair competition specified in Article 2, paragraph (1), item (iv) or item (vii) (simply referred to as "item (vii)" regardless of whether said item was revised by Act No. 30 of 2009 or not) of the Unfair Competition Prevention Act. Based on this allegation, the appellee demanded against the appellants an injunction against the manufacturing and sale of the shutters specified in the Product List attached to the judgment in prior instance ("Secure Guard") and the component parts thereof under Article 3, paragraph (1) of said Act, and also demanded joint payment of 60.9 million yen as damages under Article 4 of said Act and delay damages accrued thereon at a rate of 5% per annum from January 7, 2009, which is the day following the date of the service of a statement of claim and is

after the aforementioned act of unfair competition, until the date of full payment.

2. The court of prior instance determined that the appellants' act constitutes an act of unfair competition specified in Article 2, paragraph (1), item (vii) of the Unfair Competition Prevention Act and accepted part of the appellee's claims, i.e., the claim for an injunction against the manufacturing and sale of Secure Guard, payment of 31,956,581 yen as damages, which was estimated under Article 5, paragraph (2) of said Act, as well as delay damages accrued thereon, while dismissing the rest of the claims. Dissatisfied with this court determination, the appellants filed an appeal seeking a court judgment to revoke the judgment in prior instance with respect to the parts for which the appellants lost the case and to dismiss the appellee's claims concerning said parts.

3. The court determination with regard to the appellee's claims was made on the following premises.

(1) Touei Sangyo Co. Ltd. ("Touei Sangyo") is a company established on November 21, 1958, for the purpose of manufacturing, selling, or otherwise handling shutters and blinds. Touei Sangyo manufactures and sells aluminum shutters called "Light and Ventilation Window Shutter" (Exhibits Ko 1, 2, 13, 25, the entire import of the oral argument). The representative of the appellee, X ("X"), was the representative of Touei Sangyo as of 2006.

Diri Sangyo Yugen Kaisha ("Diri Sangyo") is a limited liability company established on November 14, 1996, for the purpose of manufacturing, selling, or otherwise handling shutters and blinds. As of 2006, the representative of Diri Sangyo was the wife of X (Exhibit Ko 24, the entire import of the oral argument).

The appellee is a company established on October 19, 2006, for the purpose of manufacturing, selling, and otherwise handling shutters and blinds. Currently, the appellee manufactures and sells the Light and Ventilation Window Shutter (Exhibits Ko 14, 41-1, the representative of the appellee of the prior instance, the entire import of the oral argument).

(2) Appellant, Kabushiki Kaisha Yume Kobo ("Appellant Yume Kobo"), is a company established on November 28, 1989, for the purpose of engaging in equipment business, etc. The representative of Appellant Yume Kobo, Y ("Y"), concluded an area-specific distribution agreement with Touei Sangyo on December 16, 2004. Since then, Appellant Yume Kobo had been a distributor of Touei Sangyo in the Hiroshima district regarding the sale of the Light and Ventilation Window Shutter (Exhibit Ko 11).

Appellant, Kabushiki Kaisha Alumi Kobo ("Appellant Alumi Kobo"), is a company established, with Y serving as the representative, on August 4, 2006. Appellant Alumi Kobo manufactures and sells Secure Guard (Exhibit Otsu 20, the entire import of the oral argument).

Appellant Yume Kobo ceased to serve as a distributor of Touei Sangyo and started selling Secure Guard manufactured by Appellant Alumi Kobo (the representatives of the appellants of the first instance, the entire import of the oral argument).

4. The major issues in this lawsuit are as follows.

(1) Whether Touei Sangyo and Diri Sangyo disclosed information about the Light and Ventilation Window Shutter to Appellant Yume Kobo (Issue 1)

(2) Whether Touei Sangyo and Diri Sangyo, and the appellee possessed a trade secret (Article 2, paragraph (6) of the Unfair Competition Prevention Act) in regard to the manufacturing of the Light and Ventilation Window Shutter (Issue 2)

(3) Whether the appellants illicitly obtained a trade secret from Touei Sangyo, Diri Sangyo, or the appellee or used it for the purpose of acquiring a wrongful gain (Article 2, paragraph (1), item (iv) of the Unfair Competition Prevention Act) or used a trade secret for the purpose of acquiring a wrongful gain or causing damage (item (vii) of said paragraph) (Issue 3)

(4) The appellee's damage (Issue 4)

(omitted)

No. 4 Court decision

1. Facts found by the court

Based on the comprehensive evaluation of the facts on which the decision is premised, and also on the evidence and the entire import of the oral argument, the following facts can be found.

(1) On December 16, 2004, Touei Sangyo concluded an area-specific distribution agreement with Appellant Yume Kobo and licensed Appellant Yume Kobo to sell the Light and Ventilation Window Shutter in the Hiroshima district (Exhibit Ko 11). Since then, Appellant Yume Kobo had been selling the Light and Ventilation Window Shutter delivered by Touei Sangyo under the aforementioned agreement (Exhibits Ko 20, 21, Otsu 2, 19).

However, around December 2005, Touei Sangyo had problems with Kabushiki Kaisha Yunite, to which the manufacturing of the Light and Ventilation Window Shutter had been consigned. In January 2006, Kabushiki Kaisha Yunite stopped delivering the Light and Ventilation Window Shutter to Touei Sangyo. As a result, the delivery of the Light and Ventilation Window Shutter from Touei Sangyo to Appellant Yume Kobo started to be delayed and finally stopped in late February 2006 (Exhibits Ko 21, Otsu 19, the representative of the appellee of the prior instance, the representatives of the appellants

of the prior instance).

Since the delivery of the Light and Ventilation Window Shutter to Touei Sangyo stopped, the representative of Touei Sangyo, X, decided to ask Diri Sangyo, which was represented by his wife, to manufacture the Light and Ventilation Window Shutter. Consequently, Diri Sangyo started manufacturing the Light and Ventilation Window Shutter at its factory from late March 2006 (Witness P of the prior instance, the representative of the appellee of the prior instance).

(2) Since Touei Sangyo stopped delivering the Light and Ventilation Window Shutter to Appellant Yume Kobo, Appellant Yume Kobo proposed to Touei Sangyo in around early April 2006 that Appellant Yume Kobo would manufacture the Light and Ventilation Window Shutter by itself for sale in the Hiroshima district. Touei Sangyo decided to examine the aforementioned proposal on the premise that a manufacturing consignment agreement would be concluded between the two companies (Exhibits Ko 21, Otsu 19, the representative of the appellee of the prior instance).

(3) By April 20, 2006, Appellant Yume Kobo contacted Kabushiki Kaisha Chugoku Tateyama ("Chugoku Tateyama"), one of the business partners of Appellant Yume Kobo, and requested Chugoku Tateyama to submit an estimate for the manufacturing, etc. of dies and molds for the component parts of the Light and Ventilation Window Shutter. In late May 2006, Appellant Yume Kobo placed an order with Chugoku Tateyama for the manufacturing thereof. On May 22, 2006, the parent company of Chugoku Tateyama, Tateyama Aluminium Industry Co., Ltd. ("Tateyama Alumi"), prepared drawings for the aluminum parts for the Light and Ventilation Window Shutter, namely, Slat B, the upper and lower rail frame, the vertical frame, and Stile A to Stile C (Exhibits Otsu 14-1 to 14-6). On May 29, 2006, Tateyama Alumi delivered these drawings to Appellant Yume Kobo and manufactured the aforementioned dies and molds (Exhibits Ko 8, 27, Otsu 17, 18).

After mid-June, 2006, Appellant Yume Kobo requested Chugoku Tateyama to manufacture component parts of the Light and Ventilation Window Shutter (Exhibit Ko 8). Chugoku Tateyama started delivering these parts to Appellant Yume Kobo from around the end of June. (Exhibit Otsu 18).

(4) Meanwhile, a comparison between the aforementioned drawings prepared by Tateyama Alumi (Exhibits Otsu 14-1 to 14-6) and the drawings included in Information 1 alleged by the appellee to have been provided thereby to Appellant Yume Kobo (Exhibits Ko 15 [1] to [8]) has revealed that, while the drawings prepared by Tateyama Alumi do not cover two component parts, namely, Slat A and the lower rail frame (Exhibit Ko 15 [1], [4]), the other six component parts (Slat B, the upper and lower rail frame, vertical frame, and Stile A to C (Exhibits Ko 15 [2], [3], [5] to [8], Otsu 14-1 to 14-6) are

covered by both sets of drawings. However, a comparison between the two sets of drawings concerning these six overlapping parts shows difference in terms of model number and mold material number assigned to each component part. Moreover, the drawings prepared by Tateyama Alumi contain additional information about the detailed slat sizes. The two sets of drawings are slightly different in terms of the allowable margin of error for each part. Also, the drawings prepared by Tateyama Alumi are different from the drawings included in Information 1 in terms of the style of statements covering the same topics such as the cutting-plane angle and the measurement of the screw hole size.

(5) Appellant Yume Kobo was experiencing late delivery of the Light and Ventilation Window Shutter from Touei Sangyo in early May 2006. Q, who was an employee of Appellant Yume Kobo, visited the factory of Diri Sangyo to assist the manufacturing of the Light and Ventilation Window Shutter. Q assisted the manufacturing of the Light and Ventilation Window Shutter, mostly the manufacturing of accordion-like parts, for about 20 days under the supervision of Factory Manager P (Exhibit Otsu 19, Witness P of the prior instance, the representatives of the appellants of the prior instance).

(6) In late May 2006, Appellant Yume Kobo placed an order with Tajima Kiko, which had been manufacturing and delivering dies and molds to process slats of the Light and Ventilation Window Shutter to Touei Sangyo, in order to purchase said dies and molds. On July 26, 2006, Tajima Kiko delivered said dies and molds to Appellant Yume Kobo without obtaining consent from Touei Sangyo or Diri Sangyo. Also, Appellant Yume Kobo requested Yugen Kaisha Kurose Koki ("Kurose Koki") to manufacture the same dies and molds and received the drawings for the dies and molds prepared by Kurose Koki on June 27, 2006. However, these drawings were partially insufficient for manufacturing the Light and Ventilation Window Shutter (Exhibits Ko 9, 39, Otsu 1, 6).

(7) On June 1, 2006, Touei Sangyo concluded a business transfer agreement with Diri Sangyo. Touei Sangyo transferred all of the business of manufacturing and selling the Light and Ventilation Window Shutter to Diri Sangyo. In this connection, all of the drawings of the component parts of the Light and Ventilation Window Shutter, knowledge about the specifications thereof, the information about suppliers of component parts, etc. were also transferred to Diri Sangyo (Exhibit Ko 13).

(8) On July 4, 2006, the representative of Appellant Yume Kobo, Y, visited the headquarters of Diri Sangyo and had a discussion with the representative of Touei Sangyo, X, and his wife, who serves as the representative of Diri Sangyo, with regard to the content of an agreement to consign the manufacturing of the Light and Ventilation Window Shutter to be concluded between Appellant Yume Kobo and the other two parties, namely Touei Sangyo and Diri Sangyo. At that time, X provided Y with a list detailing

the component parts of the Light and Ventilation Window Shutter and the drawings concerning those parts, in other words, the drawings etc. included in Information 2 (Exhibits Ko 15, 21, the representative of the appellee of the prior instance).

Then, in mid-July, 2006, Touei Sangyo and Diri Sangyo concluded with Appellant Yume Kobo an agreement concerning the manufacturing and sale of the Light and Ventilation Window Shutter (the "Manufacturing and Sales Agreement"). Said Agreement specifies that [i] while Touei Sangyo and Diri Sangyo consign the manufacturing of the Light and Ventilation Window Shutter to Appellant Yume Kobo, Appellant Yume Kobo shall not manufacture any Light and Ventilation Window Shutter and any parts for the manufacturing thereof other than those that Appellant Yume Kobo has been consigned to manufacture (Article 1 of said Agreement), [ii] Touei Sangyo and Diri Sangyo shall purchase the Light and Ventilation Window Shutter from Appellant Yume Kobo at the price equivalent to 32% of the regular price, while Touei Sangyo and Diri Sangyo shall sell the Light and Ventilation Window Shutter to Appellant Yume Kobo at the price equivalent to 45% of the regular price (Article 5 of said Agreement), [iii] Touei Sangyo and Diri Sangyo shall supply, for a fee, to Appellant Yume Kobo the parts necessary for the manufacturing of the Light and Ventilation Window Shutter (Article 5 of said Agreement), [iv] Touei Sangyo and Diri Sangyo shall disclose to Appellant Yume Kobo the technology necessary to manufacture the Light and Ventilation Window Shutter (Article 6 of said Agreement), [v] the payment for the purchase of the aforementioned parts calculated at the end of each month shall be made by the end of the following month (Article 11 of said Agreement), and [vi] Touei Sangyo and Diri Sangyo, and Appellant Yume Kobo have a confidentiality obligation for the content of the Manufacturing and Sales Agreement and for any technical or trade secret that either party has learned from the other party in the course of conducting business under the Manufacturing and Sales Agreement (Article 12 of said Agreement) (Exhibit Ko 12).

(9) During the period from July 12, 2006 to July 29, 2006, Appellant Yume Kobo delivered to Touei Sangyo sets of Slat B, upper and lower rail frame, vertical frame, and stiles. On the other hand, until around the end of July 2006, Touei Sangyo delivered to Appellant Yume Kobo some parts of the Light and Ventilation Window Shutter such as accordion-like parts (Exhibits Ko 20, 36, 37, Witness P of the prior instance).

Meiko Kasei, which had been delivering seal cushion rubber, which is one of the parts of the Light and Ventilation Window Shutter, to Diri Sangyo, delivered seal cushion rubber to Appellant Yume Kobo on July 22, 2006 (Exhibits Ko 10, 35).

On the other hand, Y established Appellant Alumi Kobo on August 4, 2006 (Exhibit Otsu 20, the entire import of the oral argument).

(10) Since Appellant Yume Kobo failed to make a payment for the parts of the Light and Ventilation Window Shutter delivered to Appellant Yume Kobo by around the end of July 2006 under the Manufacturing and Sales Agreement, Touei Sangyo and Diru Sangyo canceled said Agreement on September 7, 2006 (the facts undisputed by the parties, the entire import of the oral argument).

(11) On around September 15, 2006, Appellant Alumi Kobo started purchasing the parts specified in Information 2 from Hirano Kinzoku (Exhibit Otsu 5) and dies and molds for slat processing from Tajima Kiko (Exhibit Ko 38), and thereby manufacturing Secure Guard, which is almost identical with the Light and Ventilation Window Shutter in terms of configuration and component parts (Exhibits Ko 5, 7, 18, the entire import of the oral argument) and selling it to Appellant Yume Kobo. In this process, from around October or November 2006, Appellant Alumi Kobo started manufacturing some of the parts specified in Information 2 at a factory in Thailand (Exhibits Otsu 13, 19).

From February 2007, Appellant Alumi Kobo consigned sale of the aforementioned Secure Guard to Appellant Yume Kobo based on the agreement that the sales of Appellant Yume Kobo shall be considered to be the sales of Appellant Alumi Kobo and that Appellant Alumi Kobo shall pay Appellant Yume Kobo 10% of the sales as a commission (the representatives of the appellants of the prior instance, and the entire import of the oral argument).

(12) The appellee was established on October 19, 2006. Under a business transfer agreement concluded between the appellee and Diru Sangyo on May 10, 2008, Diru Sangyo transferred to the appellee all of the business of manufacturing and selling the Light and Ventilation Window Shutter. In this connection, Diru Sangyo transferred to the appellee, among other things, the drawings of the component parts of the Light and Ventilation Window Shutter, knowledge about the specifications thereof, and information about suppliers of component parts (Exhibit Ko 14, the entire import of the oral argument).

2. Issue 1 (Whether Touei Sangyo and Diru Sangyo disclosed information about the Light and Ventilation Window Shutter to Appellant Yume Kobo)

(1) The appellee alleged that Diru Sangyo taught Q the technology necessary to manufacture accordion-like parts of the Light and Ventilation Window Shutter. In short, this allegation can be interpreted to be alleging that Diru Sangyo provided Q with know-how concerning the manufacturing of the Light and Ventilation Window Shutter, which is alleged by the appellee to be a trade secret. The statement submitted by the representative of the appellee (Exhibit Ko 21, the representative of the appellee of the prior instance) contains information that is in line with this interpretation.

However, as found in 1 (1) and (2) above, even before Q's visit to the factory of Diru

Sangyo, the delivery of the Light and Ventilation Window Shutter from Touei Sangyo to Appellant Yume Kobo had been delayed. Appellant Yume Kobo had been negotiating with Touei Sangyo to obtain permission to manufacture the Light and Ventilation Window Shutter by itself. The aforementioned statement of the representative of the appellee does not clearly describe Q's purpose of working at the factory of Diri Sangyo. As found in 1 (5) above, it can be found that Q assisted Diri Sangyo with the manufacturing of the Light and Ventilation Window Shutter at its factory, mostly by helping manufacture accordion-like parts under the supervision of Factory Manager P (Exhibit Otsu 19, Witness P of the prior instance, the representatives of the appellants of the prior instance). There is no clear evidence to prove that special manufacturing know-how was provided to Q on that occasion. Therefore, the aforementioned statement of the representative of the appellee should be considered to be groundless and unacceptable. The aforementioned allegation of the appellee cannot be accepted either.

(2) The appellee alleged that the representative of Touei Sangyo, X, provided the representative of Appellant Yume Kobo, Y, with some of the drawings of special parts, the drawings necessary for the manufacturing of dies and molds for processing (Information 1), and the table of business partners containing information about the suppliers of special parts (Exhibit Ko 15 [9]) from mid-April to around May 23, 2006, and on around July 4, 2006, X further provided Y with the drawings, etc. of the rest of the special parts (including Information 2), thus alleging that all of the drawings, etc. necessary for the manufacturing of the Light and Ventilation Window Shutter were provided in this manner. The statement of the representative of the appellee (Exhibits Ko 15, 21, the representative of the appellee of the prior instance) contains information in line with this allegation.

A. Information 1

Regarding Information 1, the following can be found. The aforementioned statement of the representative of the appellee states that Information 1 was provided on May 23, 2006 (Exhibits Ko 15, 21). However, during the witness examination, the representative of the appellee was not able to provide a clear explanation about the date and reasons for identifying that particular date and failed to explain the reason for even providing the drawings of Slat A and the lower rail frame (Exhibits Ko 15 [1], [4]) in advance, which were not eventually delivered by Appellant Yume Kobo after the conclusion of the Manufacturing and Sales Agreement. Tateyama Alumi prepared the drawings of Slat B, the upper and lower rail frame, the vertical frame, and Stile A to Stile C (six drawings, namely, Exhibits Otsu 14-1 to 14-6) of the Light and Ventilation Window Shutter on May 22, 2006. If these drawings have been reproduced based on the drawings included in

Information 1, it would contradict with the date of providing the drawings included in Information 1 as stated by the representative of the appellee. Furthermore, a comparison between the drawings prepared by Tateyama Alumi and the drawings included in Information 1 has revealed that, as found in 1 (4) above, the drawings prepared by Tateyama Alumi do not contain the drawings of Slat A and the lower rail frame, which Appellant Yume Kobo did not subsequently deliver to the appellee. Also, those two sets of drawings are different in terms of the model number and mold material number assigned to each component part. The drawings prepared by Tateyama Alumi contain additional information about the detailed slat sizes. The two sets of drawings are slightly different in terms of the allowable margin of error for each part. Also, the drawings prepared by Tateyama Alumi are different from the drawings included in Information 1 in terms of the style of statements covering the same information topics such as the cutting-plane angle and the measurement of the screw hole size. If Appellant Yume Kobo had already received the drawings included in Information 1, it would have been unnecessary to have Tateyama Alumi prepare drawings of the Light and Ventilation Window Shutter. Also, the aforementioned differences between the two sets of drawings would not have been inevitably caused. The aforementioned statement of the representative of the appellee did not provide any reasonable explanation about these points.

The delay in the delivery from Touei Sangyo led Touei Sangyo and Appellant Yume Kobo to start negotiations with the aim of concluding an agreement concerning manufacturing consignment in April 2006. Therefore, it was natural for Appellant Yume Kobo, which needed to deliver products to its customers as soon as possible, to request Chugoku Tateyama to submit an estimate for the manufacturing of dies and molds for component parts of the Light and Ventilation Window Shutter (Exhibit Otsu 17) by April 20, 2006. Moreover, the drawings included in Information 1 (eight drawings, namely, Exhibits Ko 15 [1] to [8]) specify, by the unit of 0.1 mm, the configuration of each component part (Slat A, Slat B, upper and lower rail frame, lower rail frame, vertical frame, and Stile A to Stile C). While those parts are very precise, they can be easily reproduced based on the actual product of the Light and Ventilation Window Shutter itself by using a common technical means such as a caliper. In consideration of the facts that Appellant Yume Kobo did not need to have someone prepare the drawings for the component parts (Slat A and lower rail frame) that were not scheduled to be delivered, that, as long as Appellant Yume Kobo had obtained the drawings included in Information 1 from the appellee, there was no need to take the trouble of having Tateyama Alumi prepare the aforementioned drawings, and that there is the aforementioned difference in

terms of the content and style between the drawings prepared by Tateyama Alumi and the drawings included in Information 1, it would be natural to consider that the aforementioned drawings prepared by Tateyama Alumi were reproduced based on the actual product of the Light and Ventilation Window Shutter itself in response to a request from Appellant Yume Kobo.

According to a response statement (Exhibit Ko 8) prepared by the Intellectual Property Office of Sankyo-Tateyama Holdings, Inc., which has Sankyo-Tateyama Alumi Co., Ltd., which was a successor of Tateyama Alumi, as one of its group companies, it can be interpreted that Tateyama Alumi was given some of the drawings included in Information 1 from Appellant Yume Kobo via Chugoku Tateyama, which was a subsidiary of Tateyama Alumi, at around the end of May 2006 and that Tateyama Alumi receives orders for the manufacturing of dies and molds based on these drawings. However, in view of the facts that the aforementioned statement was not written by the person who was in charge of the negotiations, etc. with Appellant Yume Kobo as a person representing Tateyama Alumi or Chugoku Tateyama and that the drawings that are alleged to have been provided according to said statement consist only of some of the drawings included in Information 1, there is an undeniable possibility that the drawings that are alleged to have been provided are not the drawings included in Information 1 (Exhibit Ko 15 [1] to [8]), but the drawings prepared by Tateyama Alumi (Exhibits Otsu 14-1 to 14-6).

On these grounds, the aforementioned statement of the representative of the appellee to the effect that the drawings included in Information 1 were provided is unacceptable. Therefore, the appellee's allegation to the same effect is also unacceptable.

B. Table of business partners, etc. including the information about suppliers of special parts

Next, the aforementioned table of business partners (Exhibit Ko 15 [9]) is examined below. The table contains a statement "made on 06.6.22." Thus, it can be presumed that the table was prepared on around June 22, 2006. The aforementioned statement of the representative of the appellee to the effect that the table, etc. was provided, is very ambiguous and lacks reasonable grounds. Therefore, the statement that Touei Sangyo and Diri Sangyo provided the table, etc. to Appellant Yume Kobo cannot be accepted right away.

As found in 1 (6) and (9) above, it can be found that Tajima Kiko, which is included in the aforementioned table, delivered to Appellant Yume Kobo the dies and molds for processing slats for the Light and Ventilation Window Shutter on July 26, 2006, while Meiko Kasei delivered to Appellant Yume Kobo the seal cushion rubber to be processed

into component parts for the Light and Ventilation Window Shutter. In consideration of the fact that Touei Sangyo and Diri Sangyo manufactured the Light and Ventilation Window Shutter in collaboration with Appellant Yume Kobo, it would be natural even if Touei Sangyo and Diri Sangyo have provided information about Tajima Kiko and Meiko Kasei to Appellant Yume Kobo. However, since there is no evidence to prove that Appellant Yume Kobo contacted any other company included in the aforementioned table of business partners, the fact that Tajima Kiko and Meiko Kasei had transactions with Appellant Yume Kobo would not necessarily provide additional grounds for the aforementioned statement of the representative of the appellee to the effect that the aforementioned table was provided.

Thus, the aforementioned allegation of the appellee is unacceptable.

C. Information 2

(A) Regarding Information 2, the drawings included in Information 2 specify, by the unit of 0.1 mm, the configuration of each of the supplementary component parts used in the process of assembling the Light and Ventilation Window Shutter. While those parts are very precise, they can be reproduced based on the actual product of the Light and Ventilation Window Shutter itself by using a common technical means such as a caliper as is the case with Information 1. It is not unnatural for the representative of the appellee to provide the representative of Appellant Yume Kobo with the drawings, etc. included in Information 2 immediately before the conclusion of the Manufacturing and Sales Agreement in preparation for smooth enforcement of said agreement. In view of the facts that the price list that Appellant Alumi Kobo received from Hirano Kinzoku on around September 15, 2006 contains many part names that are identical with the names of the component parts specified in Information 2 (Exhibit Otsu 5) and that there is a document stating that, in around October or November 2006, the appellants considered manufacturing some of the component parts specified in Information 2 at a factory in Thailand (Exhibit Otsu 13), the aforementioned statement of the representative of the appellee can be considered to be natural and acceptable.

(B) On the other hand, the appellants denied the allegation that the drawings, etc. of the Light and Ventilation Window Shutter were provided. The statements of the representatives of the appellants (Exhibits Otsu 19, 20, the representatives of the appellants of the prior instance) contain information that is in line with this.

However, the representatives of the appellants failed to provide a reasonable explanation about the facts that the price list that Appellant Alumi Kobo received from Hirano Kinzoku on around September 15, 2006 contains part names identical with the names of some component parts specified in Information 2 (Exhibits Otsu 5) and that the

same part names as the part names included in Information 2 are used in the process of considering manufacturing some of the parts specified in Information 2 at a factory in Thailand in around October or November 2006. Regarding this point, there are no reasonable grounds. Therefore, the aforementioned allegation of the appellants is unacceptable.

(3) As described above, according to the evidence, it is possible to accept such part of the aforementioned allegation of the appellee to the effect that the representative of Touei Sangyo, X, provided the representative of Appellant Yume Kobo, Y, with the drawings, etc. included in Information 2. However, the rest of the allegation about the provision of the drawings, etc. of the Light and Ventilation Window Shutter and the disclosure of know-how concerning the manufacturing thereof is unacceptable.

3. Issue 2 (Whether Touei Sangyo and Diri Sangyo, and the appellee possessed a trade secret in regard to the manufacturing of the Light and Ventilation Window Shutter (Article 2, paragraph (6) of the Unfair Competition Prevention Act))

(1) The appellee alleged that slats and other components of the Light and Ventilation Window Shutter and the configuration of the parts including Information 2 have special features designed to enhance the performance, and that it would take a lot of work and time to newly make the drawings of those components and parts based on the actual product of the Light and Ventilation Window Shutter. Thus, the appellee alleged that the information concerning the configurations of these parts can be considered to be non-public information and fall under a trade secret (Article 2, paragraph (6) of the Unfair Competition Prevention Act).

However, any information that can be easily obtained based on a product distributed in the market cannot be considered to be "not publicly known" as specified in Article 2, paragraph (6) of the Unfair Competition Prevention Act. In view of the facts that the drawings, etc. provided from Touei Sangyo or Diri Sangyo to Appellant Yume Kobo in connection with the conclusion of the Manufacturing and Sales Agreement were only for the parts specified in Information 2 and that all of them are supplementary component parts used to assemble the Light and Ventilation Window Shutter, and that those parts can be easily reproduced based on the actual product of the Light and Ventilation Window Shutter by using a common technical means, as found in 2 (2) and (3) above, Information 2 cannot be considered to be information "not publicly known" as specified in Article 2, paragraph (6) of the Unfair Competition Prevention Act.

Therefore, the aforementioned allegation of the appellee is unacceptable due to the lack of grounds.

(2) Furthermore, the appellee alleged that the information concerning dies and molds for

slat processing that had been jointly developed by Touei Sangyo and Tajima Koki can be considered to be a trade secret (Article 2, paragraph (6) of the Unfair Competition Prevention Act).

However, as found in 1 (6) above, as proven by the fact that Kurose Koki prepared, although not perfectly, drawings of the aforementioned dies and molds for slat processing in response to an order placed by Appellant Yume Kobo, it is found that those dies and molds can be easily reproduced based on the actual product of the Light and Ventilation Window Shutter by using a common technical means. Therefore, the information about said dies and molds also cannot be considered to be information "not publicly known" as specified in Article 2, paragraph (6) of the Unfair Competition Prevention Act. Moreover, a joint developer, Tajima Koki, has continued delivering the aforementioned dies and molds to Appellant Yume Kobo or to Appellant Alumi Kobo without obtaining consent from Touei Sangyo, etc. in response to an order placed by Appellant Yume Kobo. Also, there are no reasonable grounds to prove that Touei Sangyo and Tajima Koki had a confidentiality agreement. On these grounds, the information concerning those dies and molds cannot be considered to be information that is "kept secret" as specified in said paragraph.

Since the information that can be found to have been disclosed by Touei Sangyo and Diri Sangyo to Appellant Yume Kobo cannot be considered to be a "trade secret" as specified in Article 2, paragraph (6) of the Unfair Competition Prevention Act, the aforementioned allegation of the appellee is unacceptable due to the lack of grounds in this lawsuit filed not to make the appellants liable for nonperformance, but to seek an injunction and demand payment of damages under the Unfair Competition Prevention Act.

4. Conclusion

On these grounds, without needing to examine Issues 3 and 4, the appellee's claims can be considered to be groundless. Thus, the judgment in prior instance that partially accepted the appellee's claims against the appellants for an injunction and payment of damages and delay damages shall be revoked.

Intellectual Property High Court, Fourth Division

Presiding judge: TAKIZAWA Takaomi

Judge: INOUE Yasuhito

Judge: ARAI Akimitsu