

Copyright	Date	December 24, 2021	Court	Tokyo District Court, 40th Civil Division
	Case number	2020 (Wa) 19840		
- A case in which the court denied the copyrightability of the company's logo				

Summary of the Judgment

In this case, the Plaintiff [i] alleged that the Defendant attached Defendant's marks 1 through 3 to the Defendant's product, etc., thereby infringing the Plaintiff's copyright (reproduction right) and author's moral right (right to integrity) for the Plaintiff's mark, and demanded the elimination and prevention of the obstruction based on Article 112 of the Copyright Act; [ii] alleged that the Defendant uses a trade name identical to that of the Plaintiff with a wrongful purpose, and demanded an injunction against the use of the Defendant's trade name and that the Defendant undertake procedures for cancellation of the registration based on Article 8, paragraph (2) of the Companies Act; and [iii] alleged that the Defendant uses the Defendant's domain name similar to the Plaintiff's specific indication of goods or services and it falls under an unfair act as defined in Article 2, paragraph (1), item (xix) of the Unfair Competition Prevention Act, and demanded an injunction against the use thereof based on Article 3, paragraph (1) of said Act.

In this judgment, concerning copyrightability of the Plaintiff's mark, the court determined as follows: "A mark that consists of letters to display goods or business is originally used for practical purposes, such as displaying the origin of goods or business by means of textual information. Therefore, unless there are special circumstances such as that the mark itself has creativity subject to an aesthetic appreciation independently, it is reasonable to understand that the mark does not fall under a work that belongs to the domain of art." The court also determined that the Plaintiff's mark, which is a logo, "cannot be found to have the features as European font design even in fully taking into account the features, etc. of the arrangement of letters, but it is found to be only arranged letters indicating the Plaintiff's trade name along with terms related to its business in the specific aspect ratio; based on the above, the Plaintiff's mark is used only for a practical purpose of indicating its origin and it cannot be found that there are special circumstances such as that the Plaintiff's mark has creativity subject to an aesthetic appreciation independently." In conclusion, the court denied the copyrightability of the Plaintiff's mark and dismissed the Plaintiff's demands in [i] above.

The court also determined as follows: "The Plaintiff and the Defendant are totally different in terms of locations of headquarters and sectors of business. Based on the circumstances that the Defendant's representative was a famous businessperson and had social credibility at that time, it is reasonable to find that the Defendant did not have the intention or the need to use the name recognition and credibility of the Plaintiff. Then, it is reasonable to find that the Defendant uniquely created the Defendant's trade name and used it without knowing the presence of the Plaintiff and the Plaintiff's mark." Consequently, the court did not find the presence of "wrongful purpose" as defined in Article 8, paragraph (1) of the Companies Act and "the purpose of wrongful gain or causing damage to that other person" as defined in Article 2, paragraph (1), item (xix) of the Unfair Competition Prevention Act and dismissed the Plaintiff's demands in [ii] and [iii] above.

Judgment rendered on December 24, 2021. Original was issued on the same date to the court clerk.

2020(Wa)19840, Case of seeking injunction against the use of trade name

Date of conclusion of oral argument: October 27, 2021

Judgment

Plaintiff: Kabushiki Kaisha Anowa

(omitted)

Defendant: Kabushiki Kaisha Anowa

(omitted)

Main text

1. All of the Plaintiff's claims shall be dismissed.
2. The Plaintiff shall bear the court costs.

Facts and reasons

No.1 Object of the claim

1. The Defendant must not use or display Defendant's Marks 1 through 3 as indicated in Attachment 2 on paper media, electronic media, or broadcast media, such as magazines, websites, television, newspapers, publicity leaflets, signs, etc.
2. The Defendant must delete the display of Defendant's Mark 1 that is displayed on the Defendant's Product as indicated in Attachment 3.
3. The Defendant must not use the trade name of Kabushiki Kaisha Anowa (hereinafter referred to as the "Defendant's Trade Name").
4. The Defendant must undertake procedures for the Plaintiff to cancel the registration that the Defendant filed with the Nagoya Legal Affairs Bureau on June 20, 2018 to change its trade name to Kabushiki Kaisha Anowa.
5. The Defendant must not use the domain name, ANOWA41.JP (hereinafter referred to as the "Defendant's Domain Name") on websites.

No. 2 Outline of the case

1. In this case, the Plaintiff made allegations against the Defendant and made claims as follows: [i] the Defendant attached Defendant's Marks 1 through 3 to the Defendant's Product, etc., thereby infringing the Plaintiff's copyright (reproduction right) and author's moral right (integrity right) for the Plaintiff's Mark as indicated in Attachment

1; based on this allegation, the Plaintiff demanded the elimination of the obstruction and the prevention of the obstruction based on Article 112 of the Copyright Act; [ii] the Defendant uses a trade name identical to that of the Plaintiff with a wrongful purpose, and based on this allegation, the Plaintiff demanded an injunction against the use of the Defendant's Trade Name and that the Defendant undertake procedures for cancellation of the registration based on Article 8, paragraph (2) of the Companies Act; and [iii] the Defendant uses the Defendant's Domain Name that is similar to the Plaintiff's specific indication of goods or services and it falls under an unfair act as defined in Article 2, paragraph (1), item (xix) of the Unfair Competition Prevention Act, and based on this allegation, the Plaintiff demanded an injunction against the use thereof based on Article 3, paragraph (1) of said Act.

The court disclosed its impression to both parties and recommended a settlement for early resolution in the direction of voluntarily amending the designs of Defendant's Marks 1 and 2. The Defendant showed its intention to accept the recommendation in consideration of the court's intention, but the Plaintiff did not accept the resolution by settlement, and the settlement in this court was discontinued.

2. Basic facts (facts that are not disputed between the parties and facts that can be found based on the evidence recorded and the entire import of oral arguments; in cases of indicating evidence, it includes branch numbers unless otherwise mentioned.)

(1) Parties, etc.

A. The Plaintiff is a stock company that was established on April 28, 1977 for planning, designing, supervising, and constructing commercial facilities, cultural facilities, etc., and designing, manufacturing, selling, and leasing display equipment and furniture (Exhibit Ko 1).

B. The Defendant is a stock company for planning, manufacturing, and selling foods, health foods, etc., and planning, manufacturing, and selling cosmetics, beauty products, and beauty-related equipment, etc. (Exhibit Ko 28); however, currently, the Defendant mainly engages in selling the Defendant's Goods.

C. B, who was the Defendant's representative as of the date of conclusion of oral arguments in this case, is a businessperson who has operated restaurants, etc. separately from the Defendant. B started to appear on TV widely or otherwise attracted people's attention approximately from the end of the Showa period (around 1988) and became a celebrity with social credibility, such as being nicknamed "walking 10 billion yen" (Exhibit Ko 32 and Exhibits Otsu 8 and 9).

(2) Business of the Plaintiff

A. The Plaintiff started to use the Plaintiff's Mark as a logo design for the Plaintiff's

business related to interiors and furniture and fixtures for commercial facilities by April 2000 at the latest (Exhibits Ko 8, 9, and 27), obtained a registration of domain, ANOWA.CO. JP on December 14, 2000, and used it on the website for the Plaintiff's business (Exhibit Ko 4-2 and Exhibit Ko 10).

B. The Plaintiff obtained the registration of the domain name, ANOWA. JP, on January 8, 2016 (Exhibit Ko 4-1) and trademark registrations for a pattern consisting of the Plaintiff's Mark and for standard letters "アノウ (Anowa)," for which the designated services (Class 42) are "Store interior design services, store furniture and fixtures design services, retail store design services," respectively (Exhibit Ko 2).

(3) Acts of the Defendant

A. The Defendant changed the objectives of its corporation to the current objectives on June 14, 2018, changed its trade name from "Kabushiki Kaisha Yamagami" to the Defendant's Trade Name, "Kabushiki Kaisha Anowa," and obtained registration for the trade name on June 20, 2018 (Exhibit Ko 28).

B. The Defendant registered the Defendant's Domain Name on May 14, 2019 (Exhibit Ko 29) and has operated the website using said domain name (hereinafter referred to as the "Defendant's Website") until today (Exhibit Ko 30).

C. The Defendant's Goods were introduced in a fashion magazine published on January 7, 2020 along with the expression "Create better vaginal bacterial flora conditions with this gel." with photographs of the Defendant's Goods to which Defendant's Mark 1 was affixed (Exhibit Ko 31).

D. The Defendant posted photographs of the Defendant's Goods to which Defendant's Mark 1 was affixed as shown in Attachment 5, on the Defendant's Website in around June 2020 and used Defendant's Marks 1 through 3 for advertising the Defendant's Goods (Exhibit Ko 30).

E. The Defendant sold the Defendant's Goods, on which "ANOWA 41" and "DOCTOR'S COSMETIC," not including Defendant's Mark 1, were indicated in two horizontal lines, by May 2021 at the latest (Exhibit Ko 37 and Exhibit Otsu 6).

(4) Defendant's Goods

The Defendant's Website advertises and introduces the Defendant's Goods as a gel for care for the entire female genital area, just like a cosmetic for facial skin care, stating that the vulva and vagina get thin and easily become dry in accordance with decreases in female hormones and these changes in the vaginal environment cause various symptoms of discomfort (Exhibit Otsu 6).

3. Issues

[1] Whether the Plaintiff's Mark has copyrightability (Issue 1)

[2] Whether Defendant's Mark 1 relies on the Plaintiff's Mark (Issue 2)

[3] Whether Defendant's Mark 3 infringes the Plaintiff's author's moral right (Issue 3)

[4] Whether there is a "wrongful purpose" as defined in Article 8, paragraph (1) of the Companies Act (Issue 4)

[5] Whether there is a "possibility of being infringed" as defined in Article 8, paragraph (2) of the Companies Act (Issue 5)

[6] Whether there is an act of unfair competition by the use of the Defendant's Domain Name (Issue 6)

(omitted)

No. 4 Judgment of this court

1. Issue 1 (Whether the Plaintiff's Mark has copyrightability)

(1) Copyrightability

A work means a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain (Article 2, paragraph (1), item (i) of the Copyright Act). A mark that consists of letters to display goods or business is originally used for practical purposes, such as displaying the origin of goods or business by means of textual information. Therefore, unless there are special circumstances, such as that the mark itself has creativity subject to an aesthetic appreciation independently, it is reasonable to understand that the mark does not fall under a work that belongs to the domain of art.

Applying the above understanding to this case, according to what are shown in Attachments 1 and 4, the Plaintiff's Mark is found to be a logotype, which uses a general serif font, divides the Plaintiff's trade name written in large Roman letters "ANOWA" into two horizontal lines "ANO" and "WA"; in which the serif parts of the lower right of "A" and the lower left of "N" are connected and "W" is arranged so that its center parts intersect, and between the lines (one-third of the letter height), three English words "SPACE," "DESIGN," and "PROJECT" are arranged in one line; and in which all the letters are placed within a landscape range with a ratio of 9:7.

According to the aforementioned facts found in this case, the Plaintiff's Mark cannot be found to have features as European font design even in fully taking account of features, etc. of the arrangement of letters, but it only arranged letters indicating the Plaintiff's trade name along with terms related to its business in the specific aspect length-to-width ratio. Based on the above, the Plaintiff's Mark is used only for a practical purpose that indicates its origin and it cannot be found that there are special

circumstances, such as that the Plaintiff's Mark has creativity subject to an aesthetic appreciation independently.

Therefore, it is not found that the Plaintiff's Mark falls under a work that belongs to the domain of art as defined in Article 2, paragraph (1), item (i) of the Copyright Act.

(2) Determination concerning the Plaintiff's allegation

A. The Plaintiff alleged that even if a design is used for practical items, it should be protected in consideration of the balance with cases where a design is protected as "the form of goods" as defined in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act. However, the Unfair Competition Prevention Act aims to ensure fair competition among business operators and to contribute to the sound development of the national economy. On the other hand, the Copyright Act aims to contribute to cultural development while according attention to the fair exploitation of cultural products. The Unfair Competition Prevention Act and the Copyright Act have different purports and purposes. The Plaintiff's allegation to consider balance with the Unfair Competition Prevention Act does not have the correct understanding of the purport and purpose of the Copyright Act and, therefore, it does not have an impact on the aforementioned determination.

B. The Plaintiff alleged that the Plaintiff's Mark has creativity in terms of selecting five letters of the alphabet in "ANOWA." However, "ANOWA" is the Plaintiff's trade name in Roman letters. Displaying business in Roman letters is quite common in Japan. Therefore, the Plaintiff eventually asserts the need to protect the idea of combination of letters, not the interests to be protected by the Copyright Act.

C. The Plaintiff alleged that a stable arrangement is adopted from among the arrangements of letters and ratios of letters that can be selected in many ways. However, even if a specific sense of stability is generated by the arrangement of words and ratio of letters that are adopted in the Plaintiff's Mark, it cannot be said that the sense of stability has creativity subject to an aesthetic appreciation independently beyond contributing to the practical use as a logotype.

D. The arrangement and ratio of letters in the Plaintiff's Mark emphasize the part of "ANOWA" and attract people's attention to the Plaintiff's business, as well as creating a balanced aesthetic. However, even if the Plaintiff's trade name and business are emphasized by the Plaintiff's Mark, it only contributes to the practical purpose as a mark and the arrangement and ratio of letters are common as a logotype design. Therefore, it cannot be found that they have creativity subject to aesthetic appreciation independently.

E. The Plaintiff alleged that the Plaintiff's Mark adopted a composition where the

bottom part of the V-shape (inverted triangle) is cut off and it generates beauty that causes people to feel a sense of excitement. However, the composition pointed out by the Plaintiff is naturally generated in cases of dividing the characters of "ANOWA" into two lines and arranging them with a center justification. Therefore, it cannot be said that the composition has a creativity subject to aesthetic appreciation independently.

F. In addition, despite examining the briefs submitted by the Plaintiff, the Plaintiff's allegation was made only from the unique standpoint concerning the aforementioned pertinence of aesthetic creativity and none of them can be adopted.

Consequently, without the need to make determinations on the remaining matters (Issues 2 and 3), the part related to the copyright infringement and infringement of the author's moral right among the Plaintiff's claims is groundless.

2. Issue 4 (Whether there is a "wrongful purpose" as defined in Article 8, paragraph (1) of the Companies Act)

(1) Wrongful purpose

According to the basic facts above and the evidence and the entire import of oral arguments below, the following facts are found: [i] the Plaintiff is a company that has been engaging in planning and designing, and constructing stores as its main business for a long period (Exhibit Ko 35); its headquarters is located in Kawaguchi City, Saitama Prefecture; and it is not engaged in the sale of cosmetics, beauty products, etc.; [ii] the Defendant is a company for selling cosmetics and beauty products, etc. and has never engaged in the same kind of or similar business as the Plaintiff's business; its headquarters is located in Nagoya City, Aichi Prefecture; and its major business is the sale of the Defendant's Goods; [iii] the Defendant's Goods are to be applied to female genitals with the expectation of mitigating discomfort in the female body and of showing moisturizing effects and deodorant effects (Exhibit Otsu 6) and the Defendant created the Defendant's Trade Name and changed the trade name of the Defendant to the Defendant's Trade Name by consulting a Zen Buddhist monk, etc. when starting the business related to the Defendant's Product (Exhibit Otsu 11); and [iv] B, who was the Defendant's representative, is a businessperson who has engaged in various businesses for a long period; before changing the trade name of the Defendant to the current Defendant's Trade Name, B had been a celebrity and known to people through appearances on TV and had social credibility (Exhibit Otsu 11).

According to the aforementioned facts found by this court, the Plaintiff and the Defendant are totally different in terms of locations of headquarters and sectors of business. Based on the circumstances that the Defendant's representative was a famous businessperson and had social credibility at that time, it is reasonable to find that the

Defendant did not have the intention or the need to use the name recognition and credibility of the Plaintiff. Then, it is reasonable to find that the Defendant uniquely created the Defendant's Trade Name and used it without knowing the presence of the Plaintiff and the Plaintiff's Mark.

Under these circumstances, it cannot be found that the Defendant used the Defendant's Trade Name without a "wrongful purpose" as defined in Article 8, paragraph (1) of the Companies Act.

(2) Determination concerning the Plaintiff's allegation

A. The Plaintiff alleged that the Defendant's method of using the Defendant's Trade Name in order to associate it with Defendant's Mark 1 that relies on the Plaintiff's Mark, as well as using the Defendant's Domain Name is the same as the method used by the Plaintiff, and therefore that it falls under a wrongful purpose of seeking the Defendant's own interests wrongfully in a form against public policy.

However, it should be said that it is a general practice to associate a company's logotype with its trade name or domain name, not limited to the Plaintiff. Then, it cannot be said that associating Defendant's Mark 1 with the Defendant's Trade Name and Defendant's Domain Name fall under circumstances that establish a wrongful purpose, such as seeking the Defendant's own interests wrongfully in a form against public policy.

B. The Plaintiff alleged that, after B stole the Plaintiff's Mark and adopted Defendant's Mark 1, B adopted the term "アノワ" as its company trade name in order to associate Defendant's Mark 1 with the trade name.

However, the term "アノワ," which is the Defendant's Trade Name, consists of only three sounds and it is not exceptionally unnatural for B to conceive of the term without relying on the Plaintiff. If the Plaintiff's allegation is used as a premise, it results in the Defendant having changed its original trade name and, in addition, expressing the trade name in katakana letters, "アノワ," because the Defendant wanted to use part of the Plaintiff's Mark, "ANOWA," as the Defendant's logo mark. However, in light of the details of the written statement of B, which clearly denied the aforementioned intention (Exhibits Otsu 10 and 11), the details of the Plaintiff's allegation are unnatural.

C. The Plaintiff alleged that B was aware of the fact that the Plaintiff operates a website using the term "ANOWA" and recognized the possibility that the change of the Defendant's Trade Name might cause adverse effects to the Plaintiff's business.

However, there is no evidence to find that B had the aforementioned awareness and recognition and the Plaintiff's allegation remains a matter of speculation. According to the fact that B is a celebrity and a businessperson with social credibility, it is natural to deem that there was no motivation for the Defendant to use the credibility of the

Plaintiff, which is in a business that is totally different from the Defendant, and the Plaintiff's Mark. Therefore, the Plaintiff's allegation does not have an impact on the aforementioned determination.

D. The Plaintiff alleged that, in this case, when "ANOWA41" is searched on the Internet, images of the Defendant's Goods with Defendant's Mark 1 and Defendant's Domain Name are displayed, in addition to the Defendant's Trade Name, and, actually, this causes misidentification and confusion concerning the actor of the business.

However, according to the evidence (Exhibit Ko 45 and Material 1-1), even if "ANOWA" is searched and the website of the Defendant's Goods is displayed in addition to the Plaintiff's website, since the Plaintiff and the Defendant are in totally different types of business, there is no appropriate evidence to support that misidentification and confusion occur in relation to the actor of the business. Consequently, the aforementioned Plaintiff's allegation does not have an impact on the aforementioned conclusion.

E. The Plaintiff alleged that the Defendant had no need to change its trade name from "Kabushiki Kaisha Yamagami" at that time to "Kabushiki Kaisha Anowa" and that the term "アノワ" is not a general term, and therefore, even if the Defendant is prohibited to use the Defendant's Trade Name, there are no disadvantages to the Defendant.

However, based on the aforementioned facts found in this case and the entire import of oral arguments, the Defendant actually sells the Defendant's Goods, on which "ANOWA41" is displayed, in association with the Defendant's Goods, and therefore, the Plaintiff's allegation that prohibiting the Defendant to use the Defendant's Goods does not cause disadvantages to the Defendant clearly lacks a premise.

F. The Plaintiff alleged that the use of Defendant's Mark 1 falls under a copyright infringement and, based on the premise that the use of the Defendant's Domain Name falls under an act of unfair competition, use of the Defendant's Trade Name alone being allowed is unfair. However, as explained in 1. above, the use of Defendant's Mark 1 does not fall under an infringement of the copyright (and author's moral right) and, as explained in 3. below, the use of the Defendant's Domain Name does not fall under an act of unfair competition. Therefore, all of the Plaintiff's allegations lack premises.

G. In addition, examining the briefs submitted by the Plaintiff again, it is impossible to find any circumstances that had an impact on the aforementioned findings. Therefore, none of the Plaintiff's allegations can be adopted. Consequently, without the need to make determinations on the remaining matters (Issue 5), the part based on Article 8, paragraph (2) of the Companies Act among the Plaintiff's claims is also groundless.

3. Issue 6 (Whether there is an act of unfair competition by the use of the Defendant's

Domain Name)

According to the circumstances found in 2. above, it cannot be found that the Defendant used the Defendant's Trade Name with a "wrongful purpose" as defined in Article 8, paragraph (1) of the Companies Act, as explained in 2. above. In addition, the Defendant's Domain Name is just a domain name equivalent to the name of the Defendant's Goods, and therefore, the use of the Defendant's Trade Name is justifiable as mentioned above, and this also applies to the acquisition, possession, and use of the Defendant's Domain Name. Based on the aforementioned circumstances, it cannot be found that the Defendant had "the purpose of wrongful gain or causing damage to that other person" as defined in Article 2, paragraph (1), item (xix) of the Unfair Competition Prevention Act.

On the other hand, the Plaintiff alleged based on the same circumstances as those indicated in Issue 4 that the Plaintiff had the aforementioned purpose; however, there is no evidence to support the allegation. As explained in 2. above, the Plaintiff's allegation does not have an impact on the aforementioned findings. In addition, examining the briefs submitted by the Plaintiff again, as explained in 2. above, none of the Plaintiff's allegations can be adopted.

Accordingly, without the need to make determinations on the remaining requirements, the part based on the act of unfair competition as defined in Article 2, paragraph (1), item (xix) of the Unfair Competition Prevention Act among the Plaintiff's claims is also groundless.

4. Conclusion

Consequently, all of the Plaintiff's claims are groundless and, therefore, they are dismissed, and the judgment is rendered as indicated in the main text.

Tokyo District Court, 40th Civil Division
Presiding judge: NAKASHIMA Motoyuki
Judge: YOSHINO Shuntaro
Judge: ODA Yotaro

(Attachment 1)

Plaintiff's Mark
(Plaintiff's drawing)



ANO
SPACE DESIGN PROJECT
WWA

Trademark registration

Trademark Registration No. 6179030

Class of designated goods or designated services, and goods and services

Class 42

Store interior design services, store furniture and fixtures
design services, and retail store design services

Trademark right holder (address is omitted)

Kabushiki Kaisha Anowa

Application date: September 27, 2018

Registration date: September 13, 2019

(Attachment 2)

Defendant's Mark 1
(Defendant's drawing)

ANO
DOCTOR'S COSMETICS
WA

Defendant's Mark 2

ANO
DOCTOR'S COSMETICS
WA

Defendant's Mark 3

ANOWA41

(Attachment 3)

Defendant's Goods

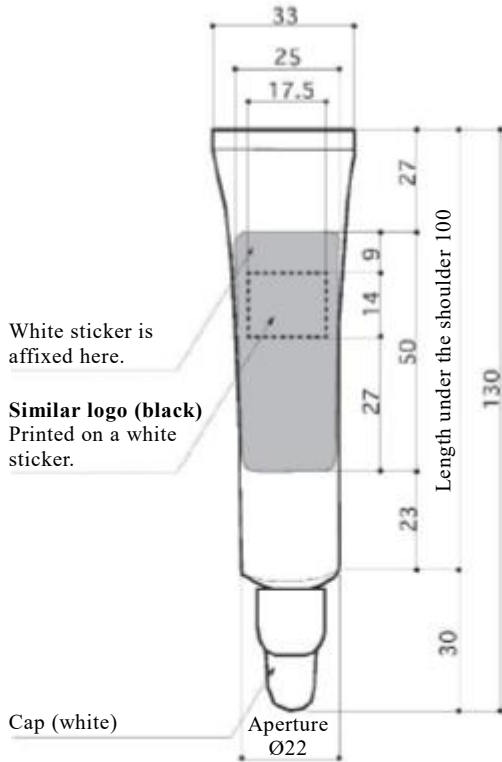
[Photograph of front side]



[Photograph of back side]

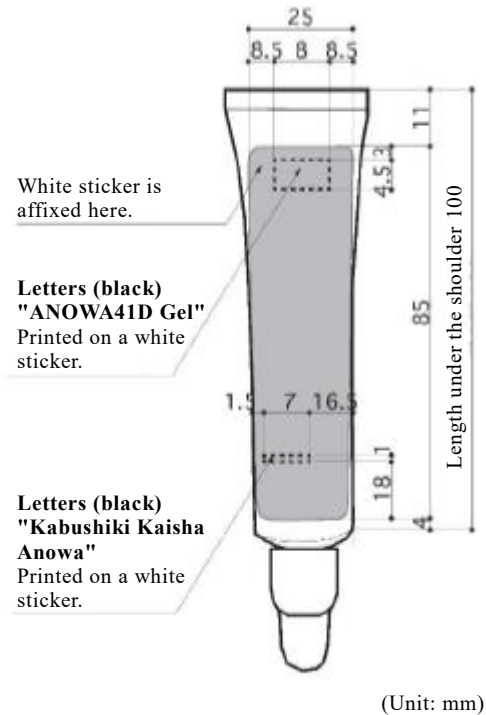


[Front side dimensions]



[Back side dimensions]

Tube container (white). Quantity of content: 25g. Displayed on back side.



(Unit: mm)

(Attachment 4)

Configuration diagram

1 2 3
A N O W A

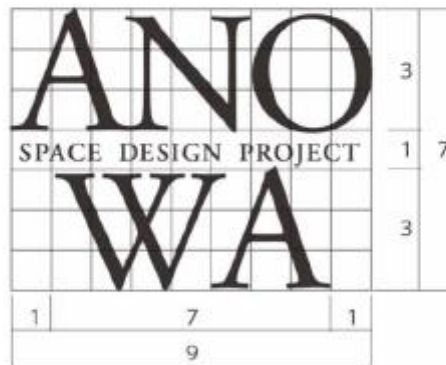


ANOWA

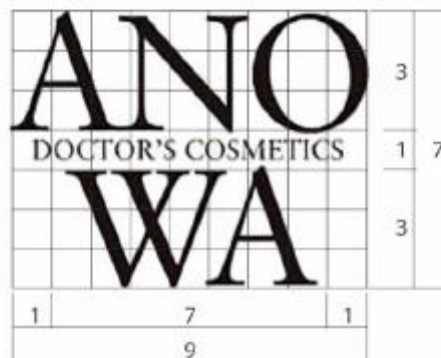
1



2



3



4

(Attachment 5)

Attachment 5: Omitted.