

Judgments of Osaka District Court, 26th Civil Division

Date of the Judgment: 2005.1.17

Case Number: 2004(Wa)No.1099

Title (Case):

A case wherein denied the infringement of the design right on the grounds that the design of the steel post produced and sold by the defendant was not identical or similar in design to the “Yukazuka (floor post)” owned by the plaintiff.

Summary of the Judgment:

The plaintiff possessed a design right in connection with “Yukazuka (floor post),” and, concerning this, a similar design had been registered. In Japanese-style construction, a floor post is a device that is placed between a lumber girder and a floor face whose height may be adjusted by grasping the turnbuckle around the center and turning it. The plaintiff sought compensation for damages and an injunction to suspend the producing and selling of the defendant’s product on the grounds that it was an infringement of the design right.

The judgment stated, “the main part of a design, the part that grabs the spectator’s attention, shall be observed from its design as a whole and approved upon the consideration of the qualities of the materials in connection with the design and its use,” and decided that a main part of the design at issue was the specific structure around the center area of the turnbuckle on the grounds that (1) as to the design in question, the center of the turnbuckle, by its position, can be recognized as the most distinct part of the design in whole, and (2), by the use of a floor post, the center area of a turnbuckle can be recognized as a part to which the people who are called for, meaning architects/ construction workers and the like, pay attention to.

Then, upon stating, “where a design includes a part that is a public model, the part is not considered a substantial part merely from that fact; however, spectators do not take notice to such public models as they are commonly used. On the other hand, spectators would be more likely to pay attention to a novel part, so it will be permitted to distinguish the public models in order to decide a main part,” the judgment decided that since the center of the turnbuckle had a novel structure that no other public designs had by contrasting and examining the plaintiff’s design and public designs, from this point of view, it was determined to be the part that grabbed the spectators’ attention the most.

Moreover, after claiming, “when a design is registered, a similar design may be permitted to be used in order to determine the substantial part as the similar design will have a like substantial part to the design in question,” the judgment stated that through comparison of the lengths between the upper part of the cylinder-shaped part

and the center and lower part of the cylinder-shaped part of the turnbuckle, a different aspect in both designs, this part could not be the substantial part which might sway the decision as to whether or not they were similar.

The judgment recognized the substantial part described above and determined that the design of the defendant's goods was not identical or similar to the plaintiff's design as there was a big difference in the substantial parts of each and some differences in parts other than their substantial parts, in spite of the fact the plaintiff's design and the defendant's design were common in many ways.

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