

Judgments of Osaka District Court, 21th Civil Division

Date of the Judgment: 2006.1.17

Case Number: 2004(Wa)No.14355

Title (Case):

A case wherein the plaintiff claimed an injunction and damages against the defendant who allegedly infringed the plaintiff's registered design for a shopping basket, but the court found that the design of the defendant's product was not similar to the plaintiff's registered design

Summary of the Judgment:

This is a case where the plaintiff, who owned a registered design for a shopping basket that is used for shopping in supermarkets and department stores, etc., claimed that the design of the shopping basket produced and sold by the defendant was similar to the registered design of the shopping basket of the plaintiff, and therefore that the defendant's production and sale of those baskets infringed the plaintiff's design right.

Based on these grounds, the plaintiff demanded an injunction against the production and sale of the defendant's shopping basket under the Design Act as well as damages for the defendant's tort of infringing the plaintiff's design right.

Regarding the features of the registered design, the court found that it is the persons in the purchasing division of a supermarket or a department store, etc., who should be regarded as consumers of such shopping baskets and therefore as observers of them. Then, the court held that such observers would observe a shopping basket by evaluating whether the design of the shopping basket is, from the viewpoint of their customers, aesthetically appropriate for the image of their shop. The court also found as follows. The observers would first pay attention to the overall configuration of the basket and, in order for the user to grasp the entire configuration, it would be natural for them to look at the basket from a distance that allows them to observe the entire picture of the basket from an obliquely upward position. As a shopping basket is relatively deep, the observers would first notice the configuration of the largest side surface of the basket (especially the front side surface). The persons in the purchasing division would pay attention to the configuration of the largest side surface of the basket for the purpose of checking the design and also for the purpose of checking safety and preventing accidents such as trapping a user's finger in a hole or mesh in the side of the basket. The observers would also pay attention, though a lower level of attention than that mentioned above, to the configuration of the rib on the bottom of the side.

Finally, the court dismissed the plaintiff's claims by holding as follows. There was a prior design of a basket for a bicycle that became publicly known 21 years

before the filing of the application for registration of the plaintiff's design. Although the design for the bicycle design could not be regarded as the same as that of a shopping basket because the articles to which the designs were applied were not the same, the bicycle basket should be taken into consideration when the features of the plaintiff's registered design were examined. The design of the bicycle basket was as follows. On each side of the basket, vertically long square holes of almost the same height were aligned in such a way that their vertical centerlines were on the same vertical straight lines. Those straight lines were aligned fan-shaped, as if those lines had been originally stuck on one another and then opened to both sides like a fan with the bottom functioning as the pivotal point. As a result, the closer the straight line was to either side, the more oblique the line was. In view of this design and another publicly-known design, the court found that the features of the plaintiff's registered design, contrary to the plaintiff's claim, did not consist in the mere alignment of holes in the same straight lines that formed a fan shape, but consisted in the fact that the heights of the holes were the same or that the holes in the upper row were twice as high as those in lower rows. On the other hand, the defendant's design was different from the plaintiff's registered design in that, in the case of the defendant's design, there were three rows of holes that increased in both height and width from the lower row to the upper row whereas the centerlines of the holes in the upper row were not in line with the centerlines of the holes in the middle row and the lower row, although the centerlines of the middle row and the lower row were on the same straight lines. Therefore, the defendant's design could not be regarded as being similar to the plaintiff's registered design despite some common features between the two designs.

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