Unfair Competition	Date	March 23, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2022 (Ne) 10098		

- It cannot be found that the form of the goods of each of the Plaintiff's Products falls under the indication of well-known goods and the like according to Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.
- Each of the Plaintiff's Products (fourth-generation products) and each of the Defendant's Products are identical or similar in the configuration of the main body parts (light emission part, base, and the like) and the shade part other than the ballast (however, the wattage is the same), but although substantial identity is found between the two products, in manufacture and sales of each of the Plaintiff's Products (fourth-generation products), it cannot be found that the Appellant himself/herself invested costs and labor and developed the goods and thus, by stating that each of the Defendant's Products falls under imitation of the forms of the goods of each of the Plaintiff's Products (fourth-generation) prescribed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act, the Appellant's claims for injunction (Article 3 of the Unfair Competition Prevention Act) and damages (Article 4 of the Unfair Competition Prevention Act) of each of the Defendant's Products have no grounds in any case.

Case type: Injunction, Appeal case of seeking a claim for injunction and a claim for damages

Result: Appeal dismissed

References: Article 2, paragraph (1), item (i), item (iii), Article 3, paragraph (1), Article 4, Article 5, paragraph (1) of the Unfair Competition Prevention Act

Summary of the Judgment

No. 1 Outline of the case

1 This case is one in which the Appellant, who sells each product (each of the Plaintiff's Products) described in the Plaintiff's product catalog in attachment in the judgment in prior instance made a claim against the Appellee for injunction of sales and import of each of the Defendant's Products and disposal thereof on the basis of Article 3, the Unfair Competition Prevention Act and payment of 100,000,000 yen (Presumption according to Article 5, paragraph (1) of the Unfair Competition Prevention Act) on the grounds of Article 4 of the Unfair Competition Prevention Act by asserting that [i] each of the products (each of the Defendant's Products) described in the Defendant's product catalog in attachment in the judgment in prior instance is identical with the form of each of the Plaintiff's Products widely recognized among consumers as indication of the Appellant's goods, and the import and sales by the Appellee of each of the Defendant's Products is the act of creating confusion with the Appellant's goods and falls under Article 2, paragraph (1), item (i) of the Unfair

Competition Prevention Act; and [ii] each of the Defendant's Products imported or sold by the Appellee imitates the form of the goods of each of the Plaintiff's Products and thus, it falls under item (iii) of the same paragraph.

2 The judgment in prior instance determined that [i] each of the Plaintiff's Products does not fall under the indication of goods and the like in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act; [ii] it is not found that the Appellant invested his/her own costs and labor for the fourth-generation products of each of the Plaintiff's Products, developed and placed them in the market and thus, he/she does not fall under a person whose business interests have been infringed (Article 3, paragraph (1), Article 4 of the Unfair Competition Prevention Act); [iii] since three years have passed since the sales of the first-generation product of the Plaintiff's Products and thus, Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act is not applicable and dismissed all the claims by the Appellant, and then, the Appellant filed an appeal within the limit of objects of the appeal clause 2 to clause 4.

No. 2 Summary of determination

1 Whether the form of each of the Plaintiff's Products is well known as the "indication of goods or the like" of the Appellant (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act)

Each of the Plaintiff's Products having been sold by the Appellant in Japan has been sold since 2010, and in those constituting each of the Plaintiff's Products, the main body parts (light emission part, base and the like) have different configuration depending on the generation of the products, but the shape of the shade part is common among each of the generation products, and as the Appellant places an emphasis on the point that the shape of the shade part is different from those of the shade parts of the other companies also on the webpage of the online shop opened by the Appellant, it can be found that the featured form of the goods is in the shade part, which is an appearance thereof in the configuration of each of the Plaintiff's Products.

On the other hand, a sales quantity of each of the Plaintiff's Products in a period from 2010 when the sales of the first generation product of each of the Plaintiff's Products was started to October in 2018 at the latest, when the Appellee started sales of each of the Defendant's Products in Japan, is not known, and in the shade part, which is the featured part of each of the Plaintiff's Products, at least the Plaintiff's Product 2 is a pleat-shaped shade similar to the model 30 manufactured and sold by Le Klint, and it is difficult to conclude that the shape has been monopolistically used.

Apart from these points, in order to regard it as indication of well-known goods and

the like, it is necessary to acquire place-of-origin identification function indicating the place of origin that each of the Plaintiff's Products is the Plaintiff's goods and to be widely known among consumers, but no accurate evidence sufficient to approve these points is found.

Therefore, even without determining on the other points, the form of the goods of each of the Plaintiff's Products is not found to fall under the "indication of goods and the like" prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.

2 Whether the Appellant falls under a person whose "business interests" have been infringed (Article 3, Article 4 of the Unfair Competition Prevention Act)

(1) Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act prescribes that the act of transferring, leasing, or importing goods that imitate the form of another person's goods falls under the act of unfair competition, and the purpose thereof is construed to regulate, for a person who developed the goods by investing costs and labor and placed the goods in the market, the act of imitating the form of the goods in order to facilitate recovery of invested costs and the like and to increase incentive for product commercialization without investing costs and labor for a certain period of time. Then, it is reasonable to construe that a person who can make a claim for an injunction (Article 3 of the Unfair Competition Prevention Act) or damages (Article 4 of the Unfair Competition Prevention Act) in the same item of the Act refers to a person who developed the goods by investing costs and labor by himself/herself and placed the goods in the market.

In examination on the premise of the above, each of the Plaintiff's Products (fourth-generation product) and each of the Defendant's Products are found to be manufactured by a Chinese company and imported into Japan by middlemen, respectively, and sold, but the Appellant asserted that the Appellant entrusted the manufacture of each of the Plaintiff's Products to the Chinese company, designed and even many components by himself/herself, discussed with a component manufacturer and determined use thereof, and carried them to the Chinese company for assembly, but there is no evidence supporting that the Appellant himself/herself developed the goods by investing costs and labor for the shade part, which should be considered to be the featured part or important part in each of the Plaintiff's Products. Though it is found that the Appellant and the component manufacturer discussed over the wattage of the ballast, printing on the remote controller, and the like, but they cannot be positioned as the featured part or the important part in each of the Plaintiff's Products, and specific communication until the Appellant entrusted the manufacture of each of the Plaintiff's Products to the

Chinese company, design drawings, specifications and the like of each of the Plaintiff's Products (the shade part in particular) made by the Appellant or a third party entrusted by the Appellant have not been submitted as evidence.

Moreover, regarding the shade part, which is a featured shape of each of the Plaintiff's Products, at least the Plaintiff's Product 2 is similar to the model 30 of Le Klint, and it is also found that goods similar to the ceiling light of the company was distributed in China.

Then, even without determining on the other points, in the manufacture and the sales of each of the Plaintiff's Products (fourth-generation product), it cannot be found that the Appellant himself/herself invested costs and labor and developed the product.

(2) As described above, although each of the Plaintiff's Products (fourth-generation product) and each of the Defendant's Products are identical or similar in the configuration of the main body parts (light emission part, base, and the like) and the shade part other than the ballast (however, the wattage is the same), substantial identity is found between the two products, but the Appellant's claims for injunction (Article 3 of the Unfair Competition Prevention Act) and damages (Article 4 of the Unfair Competition Prevention Act) of each of the Defendant's Products against the Appellee shall not be approved in any way, since each of the Defendant's Products falls under the imitation of the form of the goods of each of the Plaintiff's Products (fourth-generation) prescribed in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act.