

Design Right; Unfair Competition	Date	June 1, 2022	Court	Osaka High Court, 8th Civil Division
	Case number	2021 (Ne) 2663		
- A case in which the Court upheld the judgment in prior instance, which determined that the registered design pertaining to Plaintiff's Design Right for a lighting fixture with a fan and the design of Defendant's Product are not similar, so that it cannot be acknowledged that Defendant's Product is an imitation of Plaintiff's Product or that the form of Plaintiff's Product is an indication of goods or business, and determined that the act by Defendant of the manufacture and sale, etc. of Defendant's Product does not fall under design infringement or unfair competition as stipulated in Article 2, paragraph (1), item (i) or (iii) of the Unfair Competition Prevention Act.				

Summary of the Judgment

In the present case, Plaintiff demanded against Defendant, concerning Defendant's act of manufacture and sale of Defendant's Product, for an injunction against the transfer, etc. of Defendant's Product, disposal of the same, and compensation in the amount of JPY 7,500,000 on the ground that [1] since the design of Defendant's Product (Defendant's Design) is similar to the registered design (Plaintiff's Design) pertaining to Plaintiff's Design Right, it infringes on Plaintiff's Design Right, [2] since Defendant's Product is an imitation of the form of Plaintiff's Product, it falls under unfair competition as stipulated in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act, or [3] since Defendant's Product takes a form that is similar to the form of Plaintiff's Product, which is a well-known indication of goods, etc., it falls under unfair competition as stipulated in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.

In the judgment in prior instance (Osaka District Court judgment rendered on November 25, 2021 (2020 (Wa) 10386)) (refer to No. 95 of this journal, page 125), the court of prior instance denied similarity in regard to the above item [1] by determining that Plaintiff's Design and Defendant's Design generally share the basic configuration mode but that the part of difference in the specific configuration mode outstrips the aesthetic appeal created by the shared part, so that the overall aesthetic appeal that is visually felt by consumers is different, and in regard to the above item [2], the Court determined that it cannot be acknowledged that the form of Defendant's Product is substantively the same as the form of Plaintiff's Product and thus unfair competition as stipulated in Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act is not applicable, and as for the above item [3], the Court determined that the form of Plaintiff's Product does not fall under an indication of goods, etc., so that the provision of Article 2, paragraph (1), item (i) of the Unfair

Competition Prevention Act is not applicable.

Plaintiff filed an appeal against the judgment in prior instance, but in the judgment of the present case, the same determinations were made as the judgment in prior instance concerning all of the above items [1] through [3].

In regard to the above item [1], Plaintiff argued that the basic configuration mode in terms of the essential features of the design (two places) is the same in the two designs, as has been determined by the court of prior instance, and that the specific configuration mode is the same in one place out of the five places of the specific configuration mode. However, in the judgment of the present case, the Court held that even if Plaintiff's argument is sufficiently taken into consideration, it does not affect the determination that Defendant's Design is not similar to Plaintiff's Design. In regard to the above item [3], Plaintiff argued that the specific form of Plaintiff's Product, which is made up of a combination of three functions, has distinctiveness. However, in the judgment of the present case, the Court explained that since the specific form of Plaintiff's Product cannot be acknowledged as having distinctiveness when compared with the form that is considered to be usually found in the respective products having each of said functions, the form of Plaintiff's Product does not fall under an indication of goods or business.