

Date	October 30, 2008	Court	Tokyo District Court, 47th Civil Division
Case number	2008 (Wa) 1089		
– A case in which the court found that the defendant's product, i.e., a clothes hanger, does not infringe the plaintiff's design right.			

The plaintiffs alleged against the defendant that the defendant's act of selling or otherwise handling the defendant's product (a clothes hanger) constitutes infringement of the plaintiff's design right and sought an injunction against the import, manufacturing, assignment, and display of said product as well as the disposal thereof under Article 37, paragraphs (1) and (2) of the Design Act and demanded the payment of damages under Article 709 of the Civil Code.

In this judgment, the court found that the similarity or dissimilarity between the two designs should be determined basically by identifying the essential feature of each design, which is most visually appealing to those who see the articles embodying said design, i.e., traders and consumers, and making a comparison between the registered design and the defendant's design to examine the common features and differences in terms of the essential feature, and then determining whether the two designs give the same aesthetic impression as a whole. The court also found that, when making the aforementioned determination, it would be reasonable to examine the design in question in consideration of designs, etc. that were publicly known or well-known as of the time of the filing of the application for said design.

The court found that, while the essential feature of the plaintiff's design (the "Design") is the configuration of the hanging part and the main body of the hanger that may be perceived from the front side and the backside, the defendant's design may be considered to give a different aesthetic impression from that of the Design in that the Design has a thin semicircular board attached to the wire-like line in the upper part of the front side of the neck part, whereas the design of the defendant's product (the "defendant's design") does not have such a thin board attached to the front side of the neck part. The court concluded that, in consideration of the fact, among other things, that the common features between the Design and the defendant's design are the features that may be seen in publicly known designs, the common features may not be considered to overshadow, from the perspective of those who see the designs, the difference between the two designs in that the defendant's design does not have the aforementioned thin board in the neck part. On the grounds that the Design and the defendant's design give different aesthetic impressions to those who see the designs despite the common features between the two, the court denied the infringement of the

design right and dismissed the plaintiff's claims by holding that the defendant's design is not similar to the Design.