

Unfair Competition	Date	August 31, 2017	Court	Tokyo District Court, 46th Civil Division
	Case number	2016 (Wa) 25472		
- A case in which the court held that the configuration of Plaintiff's unit shelf, which is a ready-to-assemble storage rack consisting of parts such as supports that are made by joining two rods, is a well-known indication of goods or business, and that the sale of a unit shelf having the same or similar configuration falls under the act of unfair competition as prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.				

Summary of the Judgment

In the present case, Plaintiff, who sells a unit shelf, which is a ready-to-assemble storage rack consisting of parts such as supports that are made by joining two rods, made an allegation against Defendant that the configuration described above is a well-known indication of goods or business, so that the sale by Defendant of a unit shelf having the same or similar configuration falls under the act of unfair competition as prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, and demanded against Defendant for an injunction against transfer and the like of Defendant's unit shelf and for disposal of the same, pursuant to Article 3, paragraphs (1) and (2) of the same Act.

Points of concern in the present case are the following; namely, [i] whether or not the configuration of Plaintiff's product falls under a well-known indication of goods or business, [ii] whether or not Plaintiff's product and Defendant's product are similar and may create confusion, and [iii] whether or not an indication of goods or business is used in Defendant's product.

In the judgment of the present case, the court held as follows and upheld the claim for an injunction of the product sold by Defendant.

The configuration of a product is not necessarily selected for the purpose of indicating the source of goods. Naturally, if the configuration of a product has some noticeable characteristics based on which it is objectively clear that the product can be distinguished from other products of the same type, and if, as a result of having been used exclusively over a long period of time by a specific business operator, the configuration has become well-known among consumers as an indication of the source of a specific business operator, it is possible for the very configuration of the product to become an "indication of goods or business" (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act).

Constituent parts of Plaintiff's product and racks of the same type include partition boards, shelf boards, diagonal braces, and supports; each of these parts may be

structured in different ways, and these parts may be combined in various ways, and one can also make a choice as to what other parts to add to the aforementioned parts. The configuration of Plaintiff's product is a result of many choices having been made. Furthermore, it can be said that Plaintiff's product in its entirety, by virtue of its appearance, gives a strong impression to consumers as a result of having the aforementioned configuration, and since it cannot be acknowledged that there existed, until around 2008, products of the same type having said configuration, the configuration of Plaintiff's product had, as of around 2004, noticeable characteristics based on which Plaintiff's product can be distinguished, objectively clearly, from other products of the same type.

Given that Plaintiff's product, which has a unique configuration as described above, has attracted the notice of consumers, including those who purchased Plaintiff's product, through Plaintiff's exclusive promotional activities of a reasonably large scale, over five years, in the manner described above, the configuration of Plaintiff's product had come to be recognized by consumers, by around 2004, as an indication of the source of Plaintiff, and came to be widely recognized among consumers as an indication of goods or business as prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, and in light of the subsequent conditions, the configuration of Plaintiff's product is widely recognized, even today, among consumers as an indication of the source of Plaintiff.

The configuration of Defendant's product is almost entirely the same as the configuration of Plaintiff's product, thereby creating confusion with Plaintiff's product.

By taking into consideration that the configuration of Plaintiff's product falls under an "indication of goods or business" as prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, and that the configuration of Defendant's product is highly similar to the configuration of Plaintiff's product, the configuration of Defendant's product also falls under an "indication of goods or business", as prescribed in the same item.