

Unfair Competition	Date	November 29, 2023	Court	Tokyo District Court, 46th Civil Division
	Case number	2023 (Wa) 4333		
- A case in which the court dismissed the Plaintiff's claim for compensation for damage filed on the grounds that the Defendant sold goods that imitate the Plaintiff's facemask in a package.				

Summary of the Judgment

This is a case in which the Plaintiff, which manufactures and sells a facemask in a package (goods consisting of a facemask combined with a package; the "Plaintiff's Goods"), filed an action against the Defendant to seek compensation for damage under Article 4 of the Unfair Competition Prevention Act or Article 709 of the Civil Code, alleging that the facemask in a package manufactured and sold by the Defendant (goods consisting of a facemask combined with a package; the "Defendant's Goods") imitates the Plaintiff's Goods, and that the Defendant's act of selling the Defendant's Goods constitutes an act of unfair competition under Article 2, paragraph (1), item (iii) of the Unfair Competition Prevention Act or a tortuous act.

In this judgment, the court found as follows. The Plaintiff's Goods and the Defendant's Goods have the same basic design for the package. They are identical with each other in details, such as the design of and the descriptive text in the POP ad attached to the photo of the facemask, the descriptive text of the features of the goods and its layout, and the design with a blue line running through the four blocks wherein the features of the goods are enumerated. Although the packages of the Plaintiff's Goods and the Defendant's Goods are different in some aspects, such as the descriptions of the product name, logo, and the information on the distributor, these descriptions occupy a very small part of the goods as a whole, and they have a limited impact on the overall impression of the goods. Thus, the form of the Plaintiff's Goods and that of the Defendant's Goods are substantially identical with each other. Furthermore, the court found that the Defendant's Goods were manufactured based on the Plaintiff's Goods, pointing out the fact that the erroneous description on the package of the Plaintiff's Goods is transcribed as it is on the package of the Defendant's Goods. The Plaintiff argued that a sales agreement was cancelled because the Defendant's Goods were put on sale, and as damage it sustained, it claimed a profit that it could have gained if the sales agreement had been duly performed. However, the court dismissed the Plaintiff's claim in its entirety, holding that there is no causal relationship between such claimed

damage and the sale of the Defendant's Goods.