

Unfair Competition	Date	December 14, 2023	Court	Osaka District Court, 26th Civil Division
	Case number	2023 (Wa) 73		
- A case in which the court determined that the Defendant's act does not constitute unfair competition under Article 2, paragraph (1), items (i) and (ii) of the Unfair Competition Prevention Act.				

Summary of Judgment

This is a case in which the Plaintiff argued that a sole used for shoes manufactured and sold by the Plaintiff (hereinafter referred to as the "Plaintiff's Shoe Sole") is a well-known or famous indication of goods or business and that the Defendant's act of manufacturing and selling shoes using a shoe sole identical or similar thereto (hereinafter referred to as the "Defendant's Shoe Sole") constitutes unfair competition under Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act. Based on this allegation, the Plaintiff instituted the following claims against the Defendant: [i] an injunction against sale, etc. of shoes using the Defendant's Shoe Sole (Article 3, paragraph (1) of the same Act); [ii] the destruction of the shoes referred to in [i] (paragraph (2) of the same Article); and [iii] compensation for damage (Article 4 of the same Act).

The issues disputed in this case are as follows: [i] whether the shape of the Plaintiff's Shoe Sole falls under a "well-known or famous indication of goods or business"; [ii] whether the shape of the Plaintiff's Shoe Sole and that of the Defendant's Shoe Sole are identical or similar; [iii] whether there is a risk of confusion; [iv] whether there was any willful misconduct or negligence on the part of the Defendant; and [v] the amount of damage.

With respect to Issue [i], the court determined that the shape of the Plaintiff's Shoe Sole is not a "well-known or famous indication of goods or business" as its shape is neither obviously distinguishable from other goods of the same kind nor famous. (With respect to Issue [ii] as well, the court held that no similarity can be found between the shape of the Plaintiff's Shoe Sole and that of the Defendant's Shoe Sole.) Based on these findings, the court dismissed the Plaintiff's claims in their entirety.