

Date	November 5, 2009	Court	Osaka District Court, 21st Civil Division
Case number	2009 (Wa) 2726		
- A case wherein the court dismissed the plaintiff's claims for an injunction and damages submitted based on the design right for which the article of the design is "boots", by finding that the design of the defendants' design is not similar to the plaintiff's registered design.			

In this case, the plaintiff, who holds a design right for which the article of the design is "boots" (the "Design Right"), alleged against the defendants that the defendants infringe the Design Right by selling or otherwise handling their boots (the "defendants' product"), and accordingly, the plaintiff sought an injunction against the sale, etc. of the defendants' product and claimed damages. The major issues of the case were whether or not the design of the defendants' product (the "defendants' design") is similar to the plaintiff's registered design (the "Design"), and whether or not the plaintiff's design registration should be invalidated by a trial for invalidation of design registration.

In this case, the court held as follows. The article of the Design, from its shape, is identified as what is generally called women's tall boots. Taking into account the nature and mode of use of the article as well as the designs publicly known prior to the filing of the design application, the Design greatly attracts consumers' attention because of the combination of the following features: [a] the trunk part has five gathers; [b] a number of vertically long puffs of various sizes are formed between the gathers; and [c] the entire body has a vinyl-like glitter. It is appropriate to identify such structure and style as the essential features of the Design. The defendants' design and the Design have commonality in that: [i] they are designs of boots each comprised of the trunk part that extends from the ankle to under the knee, the shoe part that covers the area from the ankle to the foot, and the sole part that is placed at the bottom of the shoe part; [ii] the trunk part is provided with the multiple gathers in intervals along the vertical direction; and [iii] the sole part is what is generally called a wedge sole, that is, it gradually becomes thicker from the toe to the heel. However, these designs are different in that: [iv] there are five gathers on the trunk part of the Design, whereas there are three on the same part of the defendant's design; [v] the Design has a number of vertically long puffs of various sizes between the gathers on the trunk part, whereas the defendants' design does not have such puffs but only have natural wrinkles caused by the gathers; [vi] in the case of the Design, the entire body of the boots has a vinyl-like glitter, whereas in the case of the defendants' design, the surface of the trunk part and the shoe part is textured with woven fabric. Thus, the defendants' design and the Design have distinctive

differences in terms of the essential elements, and even taking their common features into consideration, their differences overwhelm their commonality, causing them to give different aesthetic impressions. Therefore they are not similar to each other. Based on this finding, the court dismissed all of the plaintiff's claims.