

Date	December 16, 2010	Court	Osaka District Court, 21st Civil Division
Case number	2009 (Wa) 6755		
A case in which the court determined that a display design for babies'/children's wear did not fall under the category of indication of business			

1. The details of the claims which the plaintiff made in this case based on the Unfair Competition Prevention Act are as follows. The plaintiff who sells, etc. babies'/children's goods, etc. sought an injunction against the use of a display design for goods which the defendant uses, under Article 3, paragraph (1) (Article 2, paragraph (1), item (i) or (ii)) of the Unfair Competition Prevention Act, as well as payment of damages by the defendant, under Article 4 of said Act, alleging that a display design for babies'/children's wear used at the plaintiff's store is a well-known or famous indication of the plaintiff's business and that the defendant uses a display design for goods that is similar to the plaintiff's display design for goods. The major issue is whether the plaintiff's display design for babies'/children's wear is a well-known or famous indication of the plaintiff's business.

2. The court ruled as follows: A display design for goods is neither intended for indicating the source of a business body nor does it originally fall under the category of indication of business, and consumers are supposed to see all of the general elements that compose a sales floor, such as the status of allocation of fixtures and fittings, materials and colors of the ceiling and walls, and the size of the sales floor, and to recognize all of what they see as a unit that composes the sales floor, and thereby to memorize the visual image of the entire sales floor; therefore, in order for a display design for goods to acquire the nature of an indication of business, the display design for goods itself at least needs to be extremely distinctive to the extent that it is independently recognized and memorized separately from other visual elements in the sales floor in the same manner as billboards and sign marks, which are originally indications of business. Then, the court ruled that it was reasonable to consider that the plaintiff's display design for babies'/children's wear is recognized and memorized merely as one of the elements that compose the image of the entire sales floor in harmony with the characteristics of the plaintiff's store that extend over the entire sales floor, taking into account the fact that most of the constituent elements of the plaintiff's display design for babies'/children's wear are those used in stores of the same sort and are distinctive, compared to the display designs for goods of stores of the same sort, only to the extent of combining an element, that is, installation of bars for taking goods, and the fact that the plaintiff's display design for babies'/children's wear is a

combination of functional elements and gives a visually neat impression to consumers, and is thus considered to be serving as one element that creates the image of the sales floor of the plaintiff's store in harmony with other characteristics of the functional sales floor of the plaintiff's store in which efficiency is pursued to reduce the operational and management costs of the store. The court also ruled that it was hard to admit that consumers recognize and memorize only the display design for babies'/children's wear at the plaintiff's store separately from other constituent elements of the sales floor in the same manner as billboards, sign marks and the like that are originally indications of business. Based on these rulings, the court determined that the plaintiff's display design is not recognized as having acquired the nature of an indication of business. Consequently, the court dismissed the plaintiff's claims under the Unfair Competition Prevention Act.