

Copyright	Date	September 25, 2024	Court	Intellectual Property High Court, Second Division
	Case number	2023 (Ne) 10111		

- A case in which the court dismissed the entirety of the Appellants' claims against the Appellee seeking an injunction against the manufacturing, sale, etc. of the Defendant's Products (children's chairs) and the destruction thereof, as well as the compensation for damage and publication of an apology advertisement, holding that the Appellee's acts of manufacturing, sale, etc. of the Defendant's Products could not be found to infringe on an indication of goods or business of the Plaintiffs' Product (a children's chair) and that the Plaintiffs' Product could not be regarded as eligible as a copyright work of applied art.

Case type: Injunction, destruction, compensation for damage and publication of an apology advertisement

Result: Appeal dismissed

References: Article 2, paragraph (1), items (i) and (ii) of the Unfair Competition Prevention Act and Articles 2, 21 and 27 of the Copyright Act

Judgment in the prior instance: Tokyo District Court, 2021 (Wa) 31529

Summary of Judgment

1. This is a case in which the Plaintiffs (Appellants) that are engaged in manufacturing and sale of the Plaintiff's Product which is a children's chair (TRIPP TRAPP) by acquiring a copyright or an exclusive license for the same product (collectively, the "Appellants"), sought an injunction of manufacturing, sale, etc. of the Defendant's Products, which are children's chairs, and the destruction thereof, as well as the compensation for damage and publication of an apology advertisement against the Defendant, based on the allegations that the manufacturing, sale, etc. of the Defendant's Products by the Defendant constitute the following: [i] acts of unfair competition due to the use of an indication of goods or business which is identical to the Plaintiffs' well-known or famous indication of goods or business (Article 2, paragraph (1), items (i) and (ii) of the Unfair Competition Prevention Act), [ii] the infringement of the Plaintiffs' copyright or exclusive license (Articles 21 and 27 of the Copyright Act), and [iii] a tort that falls out of the scope of free competition in trade (Article 709 of the Civil Code).

2. The court of prior instance dismissed the Plaintiffs' claims in their entirety, holding

that both the entire shape of the Plaintiff's Product and the Shape Features (namely, Feature 1, a configuration wherein it is a two-legged chair comprising a pair of two side members positioned right and left, and wherein the seating plate and footplate are fixed parallel to the floor between the pair of side members positioned right and left, and Feature 2, a configuration wherein the side members and leg members, in its side view, form an approximately L-shape at an acute angle of about 66 degrees as the side members stand obliquely from the floor and their bottom edges are connected to the leg members only at the diagonally-cut front edge of the leg members to directly touch the floor") are not found to constitute an indication of goods or business, and that even supposing that an aesthetic element of the Plaintiffs' Product with respect to its linear shape is eligible as a copyright work, the Defendant's Products are not the reproduction or adaptation of the Plaintiff's Product and therefore no general tort can be found. The Plaintiffs filed this appeal to challenge this judgment.

3. The court dismissed the appeal of the Plaintiffs. The summary of the findings in its judgment with respect to the issue under the Unfair Competition Prevention Act and the issue under the Copyright Act are as follows.

4. With respect to the issue under the Unfair Competition Prevention Act, the court finds that the Plaintiffs' Product has acquired the eligibility as an indication of goods or business as it creates a sophisticated, simple and sharp impression different from that of any other products, by inseparably combining the Specific Prominent Features (Feature 1, Feature 2, as well as Feature 3 wherein the seating plate and footplate are fixed by inserting them along the grooves formed inside the side members) and applying a straight line form design of side members and leg members. And, it is reasonable to determine that the Specific Prominent Features of the Plaintiffs' Product had become "well-known" as indicating the product pertaining to the business of the Plaintiffs, by the time of the release for sale of the Defendant's Products. Meanwhile, as the Defendant's Products lack the Specific Prominent Features, they cannot be considered as those that may be perceived by traders and consumers to be similar to the Plaintiffs' indication of goods or business in their entirety, in light of impressions, memory and association based on their appearance, pronunciations or concepts, while taking into consideration the actual situations in trade. In conclusion, the indication of goods or business of the Plaintiffs and the shapes of the Defendant's Products cannot be found to be similar.

5. With respect to the issue relating to the Copyright Act, considering the contents of protection under the Design Act and that under the Copyright Act and the existence of Article 2, paragraph (2) of the Copyright Act, it is reasonable to understand that

creative expressions concerning the shape of utility articles, such as the Plaintiffs' Product, can be eligible as copyright works only if they include a part that can be an object of aesthetic appreciation apart from their practical functions, or where the utility article can be considered to have been produced solely for aesthetic appreciation. The Plaintiffs' Product has the Specific Prominent Features consisting of Features 1 through 3 as well as the straight line form design of side members and leg members, and it is found that these Specific Prominent Features highlight the linear shape of the Plaintiffs' Product and give a sophisticated, simple and sharp impression. That being said, the Specific Prominent Features consist of the feature wherein a seating plate and footplate are placed between the two legs (Feature 1), the feature wherein the side members and leg members form an approximately L-shape (Feature 2), and the feature wherein the seating plates, etc. are fixed by inserting them into the grooves formed inside the side members (Feature 3), and all of these are features selected from multiple options available to achieve the utilitarian function as a height-adjustable children's chair. In addition, what is achieved by these features as a whole is a function as a chair. Therefore, it is difficult to separate the Specific Prominent Features from the functions of the Plaintiffs' Product as a chair. Although the Plaintiffs' Product with the Specific Prominent Features creates aesthetic effect as a creative expression of a chair, it cannot be considered to have a part which can be an object of aesthetic appreciation apart from its utilitarian functions as a chair. Further, in light of the situations of manufacturing and sale, the Plaintiffs' Product cannot be deemed to have been produced exclusively for the purpose of aesthetic appreciation. Moreover, even supposing that the Specific Prominent Features of the Plaintiffs' Product have the creativeness that can be an object of separate aesthetic appreciation, the Defendant's Products lack the Specific Prominent Features, and it is impossible to directly perceive the essential features of the expression of the Plaintiffs' Product from the Defendant's Products. As a result, the court must conclude that no copyright infringement can be found in this case.

Judgment rendered on September 25, 2024

2023 (Ne) 10111

Appeal case of seeking injunction against an act of unfair competition

(Court of prior instance: Tokyo District Court, 2021 (Wa) 31529)

Date of conclusion of oral argument: June 24, 2024

Judgment

Appellant: Peter Opsvik AS

Appellant: Stokke AS

Appellee: Noz Corporation

Main Text

1. The appeal shall be dismissed in its entirety.
2. The court costs shall be borne by the Appellants.
3. An additional period of 30 days is designated for the Appellants for filing a final appeal or petition for acceptance of a final appeal.

Facts and Reasons

No. 1 Object of the claim

1. The judgment in prior instance shall be rescinded.
2. The Appellee shall not manufacture, sell or exhibit for sale the products specified in Attachment "List of Defendant's Products."
3. The Appellee shall destroy the products specified in Attachment "List of Defendant's Products."
4. The Appellee shall pay Appellant Peter Opsvik AS 1,739,654 yen, together with the amount accrued thereon at the rate of 3% per annum for the period from December 21, 2021, until the completion of the payment.
5. The Appellee shall pay Appellant Stokke AS 13,047,408 yen, together with the amount accrued thereon at the rate of 3% per annum for the period from December 21, 2021, until the completion of the payment.
6. The Appellee shall post an apology advertisement as specified in Attachment "List of Apology Advertisement" on the newspaper specified in the same Attachment, according to the conditions as set out in the same Attachment.
7. A declaration of provisional execution

No. 2 Outline of the case

As used in the main text of this judgment, the abbreviations have the meanings as specified in Attachment "List of Abbreviations" (including the words defined in the judgment in prior instance as cited in this judgment).

1. Summary of the case

(1) Plaintiff Opsvik and Plaintiff Stokke manufacture and sell the Plaintiffs' Product, as an owner of a copyright for the Plaintiffs' Product acquired from designer A in the case of Plaintiff Opsvik, or as an exclusive licensee of the same copyright acquired from Plaintiff Opsvik in the case of Plaintiff Stokke. The shape of the Plaintiffs' Product is as specified in Attachment "Shape of Plaintiffs' Product" (see No. 2, 2.(2) of the "Facts and reasons" in the judgment in prior instance).

The Defendant is engaged in the business of manufacturing and sale of the Defendant's Products. The shapes of the Defendant's Products are as specified in Attachment "Shapes of Defendant's Products" (see No. 2, 2.(4) of the "Facts and reasons" in the judgment in prior instance).

(2) This is a case in which the Plaintiffs alleged that the Defendant's acts of manufacturing, sale, etc. of the Defendant's Products constitute the acts specified in [i] through [iii] below, and instituted the claims in A. through D. below against the Defendant.

[i] fall under acts of unfair competition due to the use of an indication of goods or business which is identical to the Plaintiffs' well-known or famous indication of goods or business (Article 2, paragraph (1), items (i) and (ii) of the Unfair Competition Prevention Act);

[ii] even if [i] is not relevant, an act of infringing the copyright owned by Plaintiff Opsvik and the exclusive license held by Plaintiff Stokke (Articles 21 and 27 of the Copyright Act);

[iii] even if neither [i] nor [ii] is relevant, a tort of infringing business profits of the Plaintiffs that falls out of the scope of free competition in trade (Article 709 of the Civil Code; this tort is governed by the law of Japan, the place where the consequence of the tort took place).

A. A claim of the Plaintiffs seeking an injunction against the manufacturing and sale of the Defendant's Products and the destruction thereof, pursuant to Article 3, paragraphs (1) and (2) (or alternatively, for Plaintiff Opsvik, pursuant to Article 112, paragraphs (1) and (2) of the Copyright Act) (Objects of appeal, Paragraphs 2 and 3).

B. A claim of Plaintiff Opsvik seeking the payment of compensation for damage in amount of 1,739,654 yen, together with delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from December 21, 2021 (the

day following the day on which the complaint was served), which is a day after the tort, until the completion of the payment, principally pursuant to Article 4 and Article 5, paragraph (3), item (i) of the Unfair Competition Prevention Act, or alternatively pursuant to Article 114, paragraph (3) of the Copyright Act or Article 709 of the Civil Code (Object of appeal, Paragraph 4).

C. A claim of Plaintiff Stokke seeking the payment of compensation for damage in amount of 13,047,408 yen, together with delay damage accrued thereon at the rate of 3% per annum as prescribed in the Civil Code for the period from December 21, 2021 (the day following the day on which the complaint was served), which is a day after the tort, until the completion of the payment, principally pursuant to Article 4 and Article 5, paragraph (3), item (i) of the Unfair Competition Prevention Act, or alternatively by the application by analogy of Article 114, paragraph (2) of the Copyright Act or pursuant to Article 709 of the Civil Code (Object of appeal, Paragraph 5).

D. A claim of the Plaintiffs requesting the publication of an apology advertisement as specified in Attachment "List of Apology Advertisement," pursuant to Article 14 of the Unfair Competition Prevention Act or Article 723 of the Civil Code (Object of appeal, Paragraph 6).

(3) With respect to the issue under the Unfair Competition Prevention Act, the Plaintiffs argue, principally, that the overall shape of the Plaintiffs' Product constitutes an indication of goods or business, or alternatively, that a series of the shape features of the Plaintiffs' Product comprising Features 1 and 2 (collectively, the "Shape Features") constitutes an indication of goods or business. Further, with respect to an issue under the Copyright Act, the Plaintiffs argue that the Shape Features fall under a creative expression and that both of the Defendant's Products have the Shape Features.

(4) The court of prior instance dismissed the Plaintiffs' claims in their entirety, based on the reasons summarized below:

A. With respect to the issue under the Unfair Competition Prevention Act, the Plaintiffs' principal allegation that the overall shape of the Plaintiffs' Product per se constitutes an indication of goods or business is found to be groundless, as the Plaintiffs have failed to specify an element of the product shape which indicates goods or business and performs the function to indicate the source of goods or business, although such element needs to be clearly identified. With respect to the Plaintiffs' alternative allegation that the Shape Features constitute an indication of goods or business (Article 2, paragraph (1), items (i) and (ii) of the Unfair Competition Prevention Act), the Shape Features are not considered as an indication of goods or business, as the Shape Features as defined by the Plaintiffs are too ambiguous to clearly identify the element indicating goods or

business, and the shapes of the Defendant's Products, as alleged by the Plaintiffs to be included in the Shape Features, are not found to indicate the Plaintiffs as the source of goods.

B. With respect to the issue under the Copyright Act, it is understood that even mass-production utility articles with some artistic features can be eligible as artistic works under the Copyright Act, if they present creativeness as an object for aesthetic appreciation apart from their utilitarian functions. However, even supposing that an aesthetic element of the Plaintiffs' Product with respect to its linear shape is eligible as a copyright work, a person who observes the Defendant's Products, comprising a number of complicated contoured shapes, would not be able to directly perceive the essential elements of the expression of the Plaintiffs' Product. Therefore, neither of the Defendant's Products represents a reproduction or adaptation of the Plaintiffs' Product (Articles 21 and 27 of the Copyright Act).

C. With respect to the issue of a general tort, no general tort can be found, as the manufacturing, sale, etc. of the Defendant's Products are not found to obviously infringe on the interests of the Plaintiffs or fall out of the scope of free competition in terms of common sense.

(5) The Plaintiffs instituted this appeal to challenge the judgment in prior instance.

2. Basic facts, issues and parties' allegations related to the issues

Except as modified below and the addition of the parties' supplementary allegations in this instance as stated in 3. below, the basic facts, issues, and allegations of the parties related to the issues are as stated in 2. and 3. in No. 2 (Page 4, Line 11 through Page 7, Line 12) and in No. 3 (Page 7, Line 13 through Page 29, Line 6) of the "Facts and reasons" of the judgment in prior instance, and are cited herein.

(Modification of the judgment in prior instance)

(1) The following text is added by starting a new line after the end of No. 2, 2.(1) (the end of Page 4, Line 20 of the judgment in prior instance):

"For the Plaintiffs' Product, an examiner's decision of trademark registration as a three-dimensional trademark (Class 20, the designated goods are chairs for babies and children) was granted, and it was registered on January 12, 2024 for Plaintiff Stokke as a trademark holder (Exhibits Ko 244 through 246)."

(2) The following text is added by starting a new line after the end of No. 2, 2.(4) (the end of Page 6, Line 24 of the judgment in prior instance):

"(5) The Plaintiffs commissioned INTAGE Inc. to conduct a questionnaire survey concerning a function to indicate sources of baby highchairs, and the results were

summarized as a report dated April 24, 2024 (Exhibit Ko 271).

No. 3 Judgment of this court

1. This court, in the same way as the prior instance, determines that the Plaintiffs' claims are groundless and therefore shall be dismissed, due to the following reasons.

2. Except as modified below, the found facts (e.g., the situations concerning the sale of the Plaintiffs' Product, consumers of the Plaintiffs' Product and the Defendant's Products, the market for children's chairs) are as stated in No. 4, 1. of "Facts and reasons" (Page 29, Line 8 through Page 31, Line 23) of the judgment in prior instance, and are cited herein.

(1) No. 4, 1.(1)A. (Page 29, Lines 14 through 21 of the judgment in prior instance) is replaced with the following:

"A. The Plaintiffs' Product was released for sale in 1972 in Norway, with the global sales record of 14 million units in total. Since around 1974, it has been sold at a number of stores including department stores, furniture stores and child goods retailers in Japan, selling more than 1.1 million units in total in the period from FY1990 to FY2020. The Plaintiffs' Product has been occasionally displayed by way of lining many copies side-by-side, at shop spaces and in photographs for advertisement. (Exhibits Ko 2, 7 through 13 and 16 through 20, Exhibits Ko 198 and 232, and the entire import of oral arguments)."

(2) The first sentence in No. 4, 1.(3)A. (from Page 30, Line 19, "as stated in the following items," to Line 21, "in the same way as the Plaintiffs' Product." of the judgment in of the prior instance) is replaced with: "as stated in the following items, there are a certain number of two-legged chairs for children comprising two side members positioned right and left standing obliquely from the floor, wherein the side members and leg members are approximately L-shaped, the seating plate and footplate are attached horizontally to the floor, and the height is adjustable according to the growth of children, in the same way as the Plaintiffs' Product." After the end of the second sentence of No. 4, 1.(3)A. (Page 30, Line 24, "have been released for sale from the time specified in the parentheses, at the latest" of the judgment in prior instance), the following sentence is added: "The children's chairs which had been available on the market around August 10, 2015, when the Defendant's Products were released for sale, are as specified in Attachment 'List of Children's Chairs of Competitors'."

(3) The beginning of No. 4, 1.(3)A. (the beginning of Page 31, Line 16, "Among the two-legged chairs for children mentioned above" of the judgment in prior instance)

is replaced with: "Some of the two-legged chairs for children mentioned above have a configuration wherein the approximately L-shaped side members and leg members are made of the same wood materials and there is no connection part, or wherein the side members and leg members are in non-straight line shape or curved shape. In addition, among the children's chairs listed above."

3. Claim under the Unfair Competition Prevention Act

3-1 Issue 1 (whether the product is an "indication of goods or business") and Issue 2 (whether the product is well-known or famous) under the Unfair Competition Prevention Act

(1) Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act provides that an act of creating confusion with another person's goods or business, by using an indication of goods or business that is identical or similar to another person's indication of goods or business that is widely-recognized among consumers as belonging to that person constitutes an act of unfair competition. This provision is intended to protect the function to indicate sources of a well-known indication of goods or business and to secure fair competition among businesses, by preventing businesses from soliciting customers by making them misidentify its competitor's business reputation embodied in well-known indications of goods or business with its own by such way as using indications of goods or business which are identical or similar to the competitor's famous indication of goods or business. Although an "indication of goods or business" as used in the same item refers to "a name, trade name, trademark, mark, container or packaging for goods belonging to a person's business, or any other indication of a person's goods or business," even the shape of a product itself can be eligible as an "indication of goods or business" within the meaning of Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act when having acquired a function to indicate the source, if the shape has objectively and specifically prominent features distinguishable from other goods of the same kind (specific prominence), and the product of that shape has become well-known among consumers as indicating that the product originates from the specific business, as a result of exclusive and continued use thereof for a long time by the specific business or through highly concentrated advertisement and promotion efforts or extremely high sales records.

(2) Specific prominence

In this court case, the Plaintiffs argue that, principally, the overall shape of the Plaintiffs' Product (Configurations A through G stated in Attachment "Shape of Plaintiffs' Product"; individually referred to as "Configuration A," etc.) constitutes

an indication of goods or business. While the Plaintiffs' Product is an organic combination of each configuration, as stated below, in the opinion of this court, among the overall shape of the Plaintiffs' Product, the prominent features lie in Configurations B and C wherein the side members and leg members exhibit straight lines, and in Structure F wherein the seating plate and footplate are fixed only by way of inserting them into grooves created inside the straight side members which extend parallel to the floor, and, based on these findings, that the Plaintiffs' Product has acquired the eligibility as an indication of goods or business as it creates a sophisticated, simple and sharp impression different from that of any other products, by inseparably combining Features 1 through 3 and applying a straight line form design of side members and leg members.

A. The Plaintiffs' Product is a children's chair with a certain height. Therefore, for assessing the eligibility as an indication of goods or business, it is reasonable to understand that the main consumers based on which the assessment is to be made are parents of small children who are general consumers interested in purchasing and utilizing children's chairs in Japan.

B. As stated in the basic facts and found facts, the Plaintiffs' Product, after its release in 1972 in Norway, has been imported to and sold in Japan since around 1974. The detailed configurations of its shape are as set forth in Attachment "Shape of the Plaintiffs' Product."

In addition, although the market of children's chairs with a certain height has been traditionally dominated by four-legged type chairs, a certain number of two-legged chairs comprising two side members positioned right and left standing obliquely from the floor, wherein the side members and leg members are approximately L-shaped, the seating plate and footplate are attached horizontally to the floor, and the height is adjustable according to the growth of children had been available on the Japanese market, as stated in Attachment "Children's Chairs of Competitors," as of around August 10, 2015 at the latest, when the sale of the Defendant's Products commenced (note that reference to the documentary evidence in the same Attachment includes all of its branch numbers, if any, unless a specific branch number is indicated).

Most of this type of two-legged children's chairs comprise approximately L-shaped side members and leg members that are made of the same wood materials (Chair 7 stated in Attachment "Children's Chairs of Competitors"; hereinafter, the numbers 1 through 7 refer to the numbers in the same Attachment); side members and leg members that are curved in part (Chairs 1, 2, 6 and 7); side members or leg

members that are in trapezoid-like shape or other complicated shape (Chairs 3, 4, and 5); or seating plate and footplate that are fixed by the use of a screw-shaped member (Chair 4), supporting member (Chair 1) or fixture member (Chairs 2, 3, 5 and 6) (note that, Chair 7 comprises side members with inner grooves and therefore seems to be designed to attach the plates without the use of supporting members or fixture members; however, it is different from the Plaintiffs' Product in that the side members and leg members are in curve form.)

C. Detailed configurations and specific prominence of the shape of the Plaintiffs' Product

(A) Among the specific configurations of the overall shape of the Plaintiffs' Product as asserted by the Plaintiffs, Configuration A (the Plaintiffs' Product is primarily made of wood materials, with the height of about 79 cm, width of about 46 cm, and depth of about 50 cm) pertains to the shape concerning the size of the article. This is a generic configuration which cannot be considered to have any prominent features compared with two-legged children's chairs available from competitors as of the time of the release of the Defendant's Products (i.e., Chair 1: about 83 cm in height, about 55 cm in width, about 56 cm in depth; Chair 2: about 76 cm in height, about 42 cm in width, about 45 cm in depth; Chair 3 about 73.5 cm in height, about 42 cm in width, about 48.5 cm in depth; Chair 4: about 80 cm in height, about 53 cm in width, about 48 cm in depth; Chair 5: about 78 cm in height, about 43 cm in width, about 51 cm in depth; Chair 6: about 79 cm in height, about 47 cm in width, about 59 cm in depth; Chair 7: about 81.5 cm in height, about 48.5 cm in width, about 62 cm in depth).

(B) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration B (both sides of the Plaintiffs' Product comprise two side members positioned in parallel with each other and standing obliquely from the floor, and two leg members positioned in parallel with each other and extending backward from the bottom edge of the side members) pertains to the shapes of the two legs. The configuration wherein the legs comprise two side members positioned in parallel with each other and standing obliquely from the floor, and two leg members positioned in parallel with each other and extending backward from the bottom edge of the side members, was largely common to two-legged children's chairs available from competitors as of the time of the release of the Defendant's Products.

However, apart from the above, there is no sufficient evidence to find that the shape comprising the configuration wherein the two legs are composed solely of side members and leg members, both of the side members and leg members are in straight line forms without any round or contoured part, and both edges of the side members

and leg members have an angle, had been used for any chair other than the Plaintiffs' Product, as of the time of the release of the Defendant's Products.

Therefore, the court finds that the Plaintiffs' Product had acquired prominent features different from those of the same type of products of competitors for the period from around 1974, when the Plaintiffs' Product was introduced in Japan, until the time of the release of the Defendant's Products in Japan, with respect to the abovementioned shape pertaining to Configuration B wherein the side members and leg members are in straight line forms.

(C) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration C (a pair of side members and leg members positioned right and left are connected to form an approximately L-shape at an acute angle of about 66 degrees as the bottom edges of the side members are connected to the leg members only at the diagonally-cut front edge of the leg members and the side members directly touch the floor, and these side members and leg members are perpendicular to the floor and in parallel with each other as viewed from the front and back sides) pertains to the shape of the two legs. The configuration wherein a pair of side members and leg members positioned right and left are connected to form an approximately L-shape at an acute angle of about 66 degrees as the edges of the side members and the leg members are connected and the side members directly touch the floor, and these side members and leg members are perpendicular to the floor and in parallel with each other as viewed from the front and back sides is largely common to two-legged children's chairs available from competitors at the time of the release of the Defendant's Products.

However, apart from the above, there is no sufficient evidence to find that the shape comprising the configuration wherein the connection parts of straight side members and leg members are entirely formed by the bottom edges of the side members and diagonally-cut edges of the leg members had been used for any product other than the Plaintiffs' Product, as of the time of the release of the Defendant's Products.

Therefore, it is found that the Plaintiffs' Product had acquired prominent features different from those of the same type of products of competitors from around 1974, when the Plaintiffs' Product was introduced in Japan, until the time of the release of the Defendant's Products, with respect to the abovementioned shape pertaining to Configuration C wherein the side members and leg members are in straight line forms. (D) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration D (the cross members are inserted horizontally to the floor in a way as

if being sandwiched between the two leg members, and two plates processed in wave form at their rear edges are fixed horizontally to the floor, of which the upper plate is used as a seating plate and the lower plate as a footplate) pertains to the shapes of the cross members, seating plate and footplate. The configuration wherein a seating plate and footplate are fixed horizontally to the floor was largely common to two-legged children's chairs available from competitors as of the time of the release of the Defendant's Products. The Plaintiffs' Product adopts the configuration wherein a cross member is inserted between the two leg members, and wherein the seating plate and footplate are in wave form at their rear edges but in straight line forms at their front edges. These configurations are considered to be a generic form of children's chairs, so, in this respect, the Plaintiffs' Product cannot be considered to have prominent features different from those of the same type of products of competitors.

(E) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration E (on the uppermost part of the side members, the two curved back plates are attached in a way as if being sandwiched between the side members) pertains to the shape of the back plate. The configuration to attach a back plate on the uppermost part of the side members was largely common to two-legged children's chairs available from competitors as of the time of the release of the Defendant's Products. The Plaintiffs' Product adopts back plates in curve form which are attached between the side members in a way as if being sandwiched between them, but this is considered to be a generic shape of children's chairs. In this respect, the Plaintiffs' Product cannot be considered to have prominent features different from those of the same type of products of competitors.

(F) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration F (a large number of grooves running parallel to the floor are formed inside the side members, and the seating plate and footplate are attached by inserting them into these grooves) pertains to the arrangement and fixing of the seating plate and footplate. As discussed in B. above, most two-legged children's chairs of competitors as of the time of the release of the Defendant's Products used supporting members or fixing members to fix these plates. Chair 7 adopts a configuration to fix plates by inserting them in the inner grooves of the side members, but the side members and leg members are in curve form. The Plaintiffs' Product adopts the configuration wherein a large number of grooves running horizontally to the floor are formed inside the side members, which are in straight line forms, and the seating plate and footplate are fixed to the side members solely by inserting these plates into the grooves inside the side members. There is no sufficient evidence to find that this

shape had been used for a product other than the Plaintiffs' Product as of the time of the release of the Defendant's Products.

Therefore, it is found that the Plaintiffs' Product had acquired prominent features different from those of the same type of products of competitors from around 1974, when the Plaintiffs' Product was introduced in Japan, until the time of the release of the Defendant's Products, with respect to the abovementioned shape pertaining to Configuration F.

(G) Among the specific configurations of the overall shape of the Plaintiffs' Product, Configuration G (two metal bars are placed on the bottom and central parts of the side members) pertains to the configuration between side members except in relation to the back plate, seating plate and footplate. This configuration of the Plaintiffs' Product is considered to be a generic form of children's chairs. Therefore, in this respect, the Plaintiffs' Product cannot be considered to have prominent features different from those of the same type of products of competitors.

D. Globally taking into account the distinctive elements pertaining to each of the specific configurations of the shape of the Plaintiffs' Product as mentioned above, as well as other shapes pertaining to the specific configurations, the distinctive elements of the overall shape of the Plaintiffs' Product basically consist of: the feature wherein it is a two-legged chair comprising a pair of two side members positioned right and left, and the seating plate and footplate are fixed parallel to the floor between the side members (Feature 1); the feature wherein the side members and leg members, in its side view, form an approximately L-shape at an acute angle of about 66 degrees as the side members stand obliquely from the floor and their bottom edges are connected to the leg members only at the diagonally-cut front edge of the leg members to directly touch the floor (Feature 2); and the feature wherein the seating plate and footplate are attached by inserting them along the grooves formed inside the side members (Feature 3). Further, it is found that the overall shape of the Plaintiffs' Product itself highlights Features 1 through 3 as a simple linear shape and creates a sophisticated, simple and sharp impression owing to its configurations wherein it is made of minimal pieces consisting of two legs comprising side members and leg members, back plate, seating plate and footplate, cross members and thin metal bars, wherein the side members and leg members are in straight line forms and have an angle at their edges, wherein the two legs formed by only connecting the edges of the side members and leg members are arranged in parallel with each other and perpendicularly to the floor in their front view, wherein cross members are attached in the center of the leg members away from the connection part of the side

members and leg members, wherein thin metal bars are attached to the side members, wherein the back plate is placed on the uppermost part of the side members, and wherein the seating plate and footplate in straight line forms in the front half are inserted into the grooves in the side members. In addition, it cannot be found that such shape of children's chairs was used for any chair other than the Plaintiffs' Product, as of the time of the release of the Defendant's Products.

Thus, it is reasonable to find that Features 1 through 3 of the overall shape of the Plaintiffs' Product, in combination with the straight line form design of side members and leg members, had become the specific prominent features specifically different from those of the same type of products of competitors (hereinafter referred to as the "Specific Prominent Features"), from around 1974, when the Plaintiffs' Product was introduced in Japan, until the time of the release of the Defendant's Products in Japan. On the other hand, the Shape Features as alleged by the Plaintiffs (Features 1 and 2) are not sufficient to be regarded as the Specific Prominent Features.

(3) Well-known nature of the Plaintiffs' Product

According to the facts found in the judgment in prior instance cited herein with some modifications as mentioned above, the Plaintiffs' Product was released for sale in 1974 in Norway, achieving the global sales of 14 million units in total; it has also been imported to and sold in Japan from around 1974 at a large number of shops, including department stores, furniture stores and child goods retailers, selling more than 1.1 million units in total for the period from FY1990 to FY2020; thanks to its excellence in design, it has won quite a few awards, including the Classic Award of the Norwegian Design Council (1995) and Good Design Award of Japan (2005), has been selected as one the 100 Great Designs of Modern Times of the Illinois Institute of Technology (2020), in addition to being accepted in several museums in the world, featured in many Japanese magazines, including furniture and interior magazines and child rearing magazines, and often mentioned in SNS posts. Further, with respect to the exhibition, advertisements and photographs of the Plaintiffs' Product, the Plaintiffs' Product is occasionally displayed by way of lining many copies side-by-side at shop spaces and in photographs for advertisement, and most photographs are oblique views or side views, and it is possible to recognize the existence of grooves inside the side members in most of the photographs featured in magazines. Therefore, it is found that the Specific Prominent Features can be recognized at least in displays and photographs which would draw attention of general consumers considering purchasing or using children's chairs and which provide the complete view of the Plaintiffs' Product.

Meanwhile, the Plaintiffs argue that the Shape Features (Features 1 and 2) represent shapes performing a function to indicate the source of the Plaintiffs' Product and have submitted the results of a questionnaire survey (Exhibit Ko 271). However, even in such survey, with respect to Question 4 "Choose one answer which best matches the reason why you identified this product as that originating from a specific manufacturer or brand" (a single choice question), the answer options including "The seating plate and footplate are directly fixed by inserting them inside the side members, and no parts for fixing them are used," "The seating plate, footplate, cross members and back plate perpendicularly intersect with the side members, as viewed from the front and back sides, highlighting the linear elements" were presented with only two figures showing an oblique perspective view and the names of the components of the Plaintiffs' Product, and no mention of the grooves inside the side members was made. Nevertheless, according to the results of the additional survey of respondents who gave "responses focusing on a feature of adjustability of height of seating plate and footplate" in the first survey, those who chose the answer option "The chair is constituted by two legs comprising a pair of side members positioned right and left, and the seating plate and footplate are fixed horizontally between the two side members" which corresponds to Feature 1, accounted for 38.0%; those who chose the answer option "The side members standing obliquely from the floor, the leg members touching the floor are connected to these side members, forming a slanting L-shape as a whole in its side view," which corresponds to Feature 2, accounted for 32.2%; and those who chose the answer option "The seating plate and footplate are directly fixed by inserting them inside the side members, and no parts for fixing them are used," which also corresponds to Feature 3, accounted for 17.3% (Exhibit Ko 271, Page 40). In addition, with respect to Question 3 presenting the front elevational view, oblique perspective view, and side elevational view of the Plaintiffs' Product, "If you recognized the chair in the photograph as a product of a specific manufacturer or brand, which of the shapes or features made you think so? Write the specific shapes or features" (free answer), some respondents stated a feature of the combination of side members and leg members in their side view, the number of seating plates and footplates and how they are arranged, the shapes of back plate, metal bars, seating plate and footplate, while some other respondents took note of the grooves inside the side members and the overall shape. Thus, it can be found that the overall shape of the Plaintiffs' Product, including not only Features 1 and 2 but also Feature 3, has been recognized to have distinctiveness.

Consequently, it is reasonable to determine that the Specific Prominent Features of the Plaintiffs' Product had become "well-known" as indicating the product pertaining to the business of the Plaintiffs, at least as of August 10, 2015, when the Defendant's Products were released for sale.

(4) Meanwhile, in this case, the Plaintiffs have raised an alternative allegation that the Shape Features (Features 1 and 2) fall under an indication of goods or business. However, as discussed above, as a result of the examination of the overall shape of the Plaintiffs' Product, the Plaintiff Product is found to have the Specific Prominent Features which are well-known, so the overall shape of the Plaintiffs' Product can be considered as an indication of goods or business under Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act (even supposing that only distinctive elements of the Plaintiffs' Product, not the entire product itself, constitute an indication of goods or business, the Specific Prominent Features of the Plaintiffs' Product, as discussed above, are found to exist in the combination of at least Features 1 through 3, and the Shape Features (Features 1 and 2) cannot be considered as only features that constitute the indication of goods or business of the Plaintiffs. Therefore, the alternative allegation of the Plaintiffs is found to be unacceptable).

3-2 Issue 3 under the Unfair Competition Prevention Act (similarity between product shapes)

(1) As mentioned above, whereas the overall shape of the Plaintiffs' Product having the Specific Prominent Features is found to fall under the Plaintiffs' indication of goods or business, the Defendant's Products are not the complete reproductions of the Plaintiffs' Product and therefore the Defendant cannot be considered to have used the indication of goods or business which is identical to that of the Plaintiffs. Meanwhile, it is reasonable to determine the similarity between the shapes of the Defendant's Products and the indication of goods or business of the Plaintiffs with reference to the criterion of whether traders and consumers may perceive them to be similar in their entirety, in light of impressions, memory and association based on their appearance, pronunciations or concepts, while taking into consideration the actual situations in trade (see 1982 (O) 658, judgment of the Second Petty Bench of the Supreme Court on October 7, 1983, Minshu Vol. 37, No. 8, at 1082).

(2) To examine this point, the shapes of the Defendant's Products are as specified as Configurations a through f in Attachment "Shapes of Defendant's Products" (hereinafter simply referred to as "Configuration a," etc.) According to this Attachment, when compared with Features 1 through 3 constituting the Specific Prominent Features, the Defendant's Products are two-legged chairs composed of a

pair of side members positioned right and left, wherein the seating plate and footplates are fixed parallel to the floor between the pair of side members positioned right and left (Feature 1), and the side members and leg members, in their side view, form an approximately L-shape at an acute angle of about 66 degrees as the side members stand obliquely from the floor and their bottom edges are connected to the leg members only at the diagonally-cut front edge of the leg members to directly touch the floor (Feature 2). However, the Defendant's Products have no grooves inside the side members, but have a large number of circle-shaped holes to fasten screws with fixing members on the rear side of the side members, members for supporting seating plate and footplate between the side members, as well as fixing members and screw members to fix these supporting members suspended between the side members. By fastening the screw members after connecting the fixing member to the hole created in the rear side of the two side members, the Defendant's Products fix their supporting members to the side members by sandwiching the side members with the supporting members and fixing members from the front and back directions (Configuration f). Thus, the Defendant's Products are found to lack Feature 3 of the Plaintiffs' indication of goods or business.

Even considering other shape elements, the Defendant's Products are composed of two legs consisting of side members and leg members, back plate, seating plate and footplate, cross members, as well as screw members, supporting members and fixing members; the leg members are straight but the side members are not; the top edges of the side members are bent perpendicular to the floor; the two legs are arranged in parallel with each other and perpendicularly to the floor in their front view; the cross members are attached in the center of the leg members away from the connection part of the side members and leg members; a back plate on which an oval-shaped hole is created in the center is placed on the uppermost part of the side members; the seating plate and footplate are in a contoured shape like an ellipse without short sides, and fixed to the side members by screw members, supporting members and fixing members. Therefore, the shapes of the Defendant's Products are characterized by an element of contoured shape and the stability by the use of plural members for supporting materials of the seating plate and footplate, creating an impression different from the sophisticated, simple and sharp impression of the Plaintiffs' Product characterized by its linear shape. Therefore, the Defendant's Products are found to lack the Specific Prominent Features characterizing the overall shape of the Plaintiffs' Product.

(3) Therefore, as the Defendant's Products lack the Specific Prominent Features, they

cannot be considered as those that may be perceived by traders and consumers to be similar to the Plaintiffs' indication of goods or business in their entirety, in light of impressions, memory and association based on their appearance, pronunciations or concepts, while taking into consideration the actual situations in trade. In conclusion, the indication of goods or business of the Plaintiffs and the shapes of the Defendant's Products cannot be found to be similar.

3-3 Summary

(1) From the above, the claim of the Plaintiffs under Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act is found to be groundless, without the need to make determinations on the other points of issue.

(2) The Plaintiffs also have alleged that their famous indication of goods or business was infringed, pursuant to Article 2, paragraph 1, item (ii) of the Unfair Competition Prevention Act. However, even supposing that the indication of goods or business of the Plaintiffs is famous, as mentioned above, as the shapes of the Defendant's Products cannot be considered to be identical or similar to such indication, the abovementioned allegation of the Plaintiffs is found to be unacceptable and therefore the claim based on this allegation is groundless.

4. Claim under the Copyright Act

4-1 Issue 5 (whether the Plaintiffs' Product qualifies as a copyright work) and Issue 6 (whether the Defendant's Products are reproductions or adaptations) under the Copyright Act

(1) Whereas the Plaintiffs' Product is a children's chair for utilitarian purpose, the Plaintiffs raise such allegations as that it qualifies as a copyright work under the Copyright Act as it is a work specifically representing its creator's individual characteristics. In response to this, the Defendant argues that the creativity should be assessed in a restricted manner, taking into consideration the necessity for appropriately separating domains of the Copyright Act and the Design Act.

To examine this point, the Copyright Act aims "to ensure protection for the rights of authors and other such persons while according attention to the fair exploitation of these cultural products, and thereby to contribute to cultural development" (Article 1 of the same Act), and defines a copyright work as "a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain" (Article 2, paragraph (1), item (i) of the same Act). The Act also provides: "As used in this Act, an 'artistic work' includes a work of artistic craftsmanship" (paragraph (2) of the same Article). According to the statement of a government delegate at the 61st Session of the Education Committee of the House of

Representatives held on May 16, 1969, a "work of artistic craftsmanship" is understood to mean a one-of-a-kind work of artistic craftsmanship (Exhibit Ko 269). In addition, the Copyright Act provides an author's rights contained in a copyright (Article 17, paragraph (1) and Articles 21 through 28 of the same Act), and moral rights of author (Article 17, paragraph (1) and Articles 18 through 20 of the same Act), limitations on copyright (Articles 30 through 50 of the same Act), and the duration for a period of 70 years after the death of the author as a general rule (Article 51 of the same Act).

On the other hand, the Design Act aims "to encourage the creation of designs by enabling the protection and utilization of designs, and thereby contributing to the development of industry" (Article 1 of the same Act), and defines a design as "the shape, patterns, or colors, or any combination of them of an article," "which is aesthetically pleasing in its visual presentation" (Article 2, paragraph (1) of the same Act). In addition, the Design Act provides that design rights come into existence through registration of their establishment (Article 20 and thereafter of the same Act), and that "A holder of a design right has the exclusive right to work the registered design and designs similar to it in the course of trade" (Article 23 of the same Act; the term "work" means an act of manufacturing, transfer, etc. of an article embodying the design (Article 2, paragraph (2) of the same Act)). However, the Design Act has no provisions on moral rights, and the duration of design rights ends 25 years after the filing date of the application for design registration as a general rule (Article 21, paragraph (1) of the same Act).

Meanwhile, the Berne Convention (Treaty No. 4 of 1975) provides that it shall be a matter for legislation in the countries of the union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected (Article 2(7) of the same Convention). Therefore, how to protect creations pertaining to shapes and other aspects of utility articles, like the Plaintiffs' Product, in Japan require discussion from the standpoint of ensuring the appropriate harmonization of protection under the Copyright Act and protection under the Design Act, in light of their respective purposes, natures and the particulars of rights to be conferred.

As argued by the Plaintiffs, when adopting an approach to consider shapes, etc. of mass-produced utility articles to be eligible as copyright works as long as they represent individual characteristics of the creator to some extent, it follows that a copyright concerning the shapes, etc. of these utility articles comes into existence

simultaneously with the creation of works without the need to follow examination or registration procedures, and this situation would cause confusion by complicating the relationship concerning rights due to possible increases in cases where a license from a copyright owner is required, in light of the need to pay due regards to various rights contained in copyright and moral rights of author. This situation, in addition to a long-term duration for protection of copyright, could be against the purpose of the Copyright Act "to ensure protection for the rights of authors and other such persons while according attention to the fair exploitation of these cultural products, and thereby to contribute to cultural development." It may well be said that solving this issue based on the interpretation of the provisions on copyright restriction under the current Copyright Act, not by way of the legislative process, would be difficult. On the other hand, while Article 2, paragraph (1), item (i) of the Copyright Act provides that a "work" is required to "fall within the literary, academic, artistic, or musical domain," utility articles are solely intended for actual use and not for appreciation, even when they have some aesthetic elements. Even admitting that utility articles can involve various creations and artifacts concerning the expressions of their shapes and other elements for achieving their functions, as long as such elements can create aesthetic impressions in the eyes of viewers, they could be protected under the Design Act even without being protected under the Copyright Act and such protection would be generally sufficient. In light of these, it is reasonable to understand that creative expressions concerning the shape of utility articles, such as the Plaintiffs' Product, can be eligible as copyright works only if they include a part that can be an object of aesthetic appreciation apart from their practical functions, or where the utility article can be considered to have been produced solely for aesthetic appreciation. Article 2, paragraph (2) of the Copyright Act provides that an "artistic work" includes a "work of artistic craftsmanship," and it is considered that the "work of artistic craftsmanship" as mentioned in the same paragraph refers to an object of aesthetic appreciation apart from its utilitarian functions. Therefore, the provision of the same paragraph, even if it is understood as an exemplifying provision, can be considered to serve one of the bases supporting the abovementioned interpretation of the eligibility of applied arts as copyright works.

(2) In light of the above, to examine this case, the Plaintiffs' Product has the Specific Prominent Features consisting of Features 1 through 3 as well as the straight line form design of side members and leg members, and it is found that, as mentioned above, these Specific Prominent Features highlight the linear shape of the Plaintiffs' Product and give a sophisticated, simple and sharp impression. That being said, the

Specific Prominent Features consist of the feature wherein a seating plate and footplate are placed between the two legs (Feature 1), the feature wherein the side members and leg members form an approximately L-shape (Feature 2), and the feature wherein the seating plates, etc. are fixed by inserting them into the grooves formed inside the side members (Feature 3), and all of these are features selected from multiple options available to achieve the utilitarian function as a height-adjustable children's chair. In addition, what is achieved by these features as a whole is also a function as a chair. Therefore, it is difficult to separate the Specific Prominent Features from the functions of the Plaintiffs' Product as a chair. In other words, although the Plaintiffs' Product with the Specific Prominent Features creates aesthetic effect as a creative expression of a chair, it cannot be considered to have a part which can be an object of aesthetic appreciation apart from its utilitarian functions as a chair. Further, in light of the situations of manufacturing and sale, the Plaintiffs' Product cannot be deemed to have been produced exclusively for the purpose of aesthetic appreciation. Moreover, even supposing that the Specific Prominent Features of the Plaintiffs' Product have the creativeness that can be an object of separate aesthetic appreciation, the Defendant's Products lack the Specific Prominent Features, as mentioned above, and therefore the Defendant's Products create an impression different from the sophisticated, simple and sharp impression highlighting its linear shape as represented by the shape of the Plaintiffs' Product, and it is impossible to directly perceive the essential features of the expression of the Plaintiffs' Product from the Defendant's Products.

As a result, the court must conclude that no copyright infringement can be found in this case.

4-2 Summary

Based on the above, the claim of the Plaintiffs under the Copyright Act is found to be groundless, without the need to make determinations on the other points of issue.

5. Claim under general tort law

Issue 7 (whether or not a general tort can be found)

As discussed above, the manufacturing, sale, etc. of the Defendant's Products cannot be considered to infringe on the interests of the Plaintiffs to be protected under the Unfair Competition Prevention Act or the Copyright Act, or go beyond the scope of fair competition in terms of common sense.

Therefore, the Plaintiffs' claim under general tort law is also found to be groundless.

6. Summary

Based on the above, the court finds all of the claims of the Plaintiffs to be groundless. Even examining the case record according to the allegations of the parties, no appropriate allegation and evidence sufficient to affect the findings and determination as mentioned above can be found.

No. 4 Conclusion

Therefore, as the judgment in prior instance with the same conclusion is found to be appropriate, the court dismisses the appeal in its entirety and renders the judgment as indicated in the main text.

Intellectual Property High Court, Second Division

Presiding Judge: SHIMIZU Hibiku

Judge: KIKUCHI Eri

Judge: RAI Shinichi

(Attachment)

List of Plaintiffs' Product

Product name: TRIPP TRAPP

(In Japanese: トリップトラップ)

Colors: natural, black, white, whitewashed, walnut brown, warm red, storm gray, hazy gray, moss green, soft mint, serene pink, and sunflower yellow

Shape: as indicated in the figure below





(Attachment)

List of Defendant's Products

1. Defendant's Product 1

Product name: Choice Kids

Colors: natural, walnut, ivory, white, and red

Shape: as indicated in the figure below





2. Defendant's Product 2

Product name: Choice Baby

Colors: natural, walnut, ivory, white, and red

Shape: as indicated in the figure below





(Attachment "List of Apology Advertisement" is omitted)

(Attachment)

List of Abbreviations

Plaintiff Opsvik	Appellant Peter Opsvik AS, a corporation incorporated in the Kingdom of Norway (the first-instance plaintiff)
Plaintiff Stokke	Appellant Stokke AS, a corporation incorporated in the Kingdom of Norway (the first-instance plaintiff)
A	A
Plaintiffs' Product	The chair specified in Attachment "List of Plaintiffs' Product" (product name: TRIPP TRAPP)
Defendant	Appellee Noz Corporation (the first-instance defendant)
Defendant's Product 1	The product specified in 1. in Attachment "List of Defendant's Products" (product name: Choice Kids)
Defendant's Product 2	The product specified in 2. in Attachment "List of Defendant's Products" (product name: Choice Babies)
Defendant's Products	Defendant's Product 1 and Defendant's Product 2
Unfair Competition Prevention Act	The Unfair Competition Prevention Act of Japan (Act No. 47 of 1993)
Specific prominence	The shape of a product has prominent features objectively different from those of any other product of the same type.
Well-known nature	The shape of a product has become well-known among consumers as indicating the source of the product of a specific business.
Feature 1	A configuration of the Plaintiffs' Product wherein it is a two-legged chair comprising a pair of two side members (meaning two bar-shaped members positioned in parallel with each other and standing obliquely from the floor) positioned right and left, and wherein the seating plate and footplate are attached parallel to the floor between the pair of side members positioned right and left.
Feature 2	A configuration of the Plaintiffs' Product wherein the side members and leg members (meaning two bar-shaped members positioned in parallel with each other and extending backward

	from the bottom edge of the side members), in its side view, form an approximately L-shape at an acute angle of about 66 degrees as the side members stand obliquely from the floor and their bottom edges are connected to the leg members only at the diagonally-cut front edge of the leg members to directly touch the floor.
Feature 3	Configuration wherein the seating plate and footplate are attached by inserting them along the grooves formed inside the side members
Shape Features	Feature 1 and Feature 2
Overall shape of the Plaintiffs' Product	Configurations A through G specified in Attachment "Shape of Plaintiffs' Product"
Specific Prominent Features	The prominent features wherein Features 1 through 3 of the overall shape of the Plaintiffs' Product, in combination with the straight line form design of side members and leg members, create prominent features different from those of the same type of any product of competitors.

(Attachment)

Shape of the Plaintiffs' Product

The overall shape of the Plaintiffs' Product is constituted by the following features:

- A. The Plaintiffs' Product is primarily made of wood materials, with the height of about 79 cm, width of about 46 cm, and depth of about 50 cm.
- B. Both sides of the Plaintiffs' Product comprise two side members positioned in parallel with each other and standing obliquely from the floor, and two leg members positioned in parallel with each other and extending backward from the bottom edge of the side members.
- C. A pair of side members and leg members positioned right and left are connected to form an approximately L-shape at an acute angle of about 66 degrees as the bottom edges of the side members are connected to the leg members only at the diagonally-cut front edge of the leg members and the side members directly touch the floor, and these side members and leg members are arranged perpendicular to the floor and in parallel with each other as viewed from the front and back sides.
- D. The cross members are inserted horizontally to the floor in a way as if being sandwiched between the two leg members, and two plates in wave form at their rear edges are fixed horizontally to the floor, of which the upper plate is used as a seating plate and the lower plate as a footplate.
- E. On the uppermost part of the side members, the two curved back plates are attached in a way as if being sandwiched between the side members.
- F. A large number of grooves running parallel to the floor are formed inside the side members, and the seating plate and footplate are attached by inserting them into these grooves.
- G. Two metal bars are placed on the bottom and central parts of the side members.

Shapes of the Defendant's Products

The configurations of the overall shape of Defendant's Product 1 are as follows. The overall shape of the Defendant's Product 2 is composed of the following configurations combined with a baby guard and a back plate for babies.

- a. Defendant's Product 1 is primarily made of wood and plastic materials, with the height of about 72 cm, width of about 48.3 cm, and depth of about 48.5 cm.
- b. The sides of Defendant's Product 1 are composed of two side members positioned in parallel with each other, stretching from the floor upward in an oblique direction and bent perpendicular to the floor on its top part, and two leg members positioned in parallel with each other, extending backward from the bottom edge of the side members.
- c. A pair of side members and leg members positioned right and left are connected to form an approximately L-shape as the bottom edges of the side members are connected to the leg members only at the diagonally-cut front edge of the leg members and the side members directly touch the floor, and these side members and leg members are arranged perpendicular to the floor and in parallel with each other as viewed from the front and back sides.
- d. The cross members are inserted horizontally to the floor in a way as if being sandwiched between the two leg members, and two plates in a shape like an ellipse without short sides are attached horizontally to the floor, of which the upper plate is used as a seating plate and the lower plate as a footplate.
- e. On the uppermost part of the side members, the curved back plate with an oval-shaped hole on the center is attached in a way as if being sandwiched between the side members.
- f. The Defendant's Products have a large number of circle-shaped holes to fasten screws with fixing members on the rear side of the side members, members for supporting seating plate and footplate between the side members, as well as fixing members and screw members to fix these supporting members suspended between

the side members. By fastening the screw members after connecting the fixing member to the hole created in the rear side of the two side members, the Defendant's Products fix their supporting members to the side members by sandwiching the side members with the supporting member and fixing members from the front and back directions.

(Attachment)

Children's Chairs of Competitors

Chair 1: Leander, Highchair (Exhibit Otsu 6) (Released for sale in Japan in December 2012)

Chair 2: Daisho Sangyo, Wood chair WC-16 (Exhibit Otsu 22) (A customer review dated November 15, 2012 was posted.)

Chair 3: EZ-2 (Exhibit Otsu 23) (An image was posted on April 7, 2015.)

Chair 4: CombiWith Corporation, Highchair for facility use R1 (Exhibit Otsu 24) (Released before January 2008)

Chair 5: HOTTA WOODWORKS Co.,Ltd., Adirondack chair No. 2 (Exhibit Otsu 25) (A customer review dated December 7, 2011 was posted.)

Chair 6: Karimoku Furniture Inc., Fit Chair CU1017 (Exhibit Otsu 26) (A customer review dated September 10, 2014 was posted.)

Chair 7: farska, wood chair (Exhibit Otsu 28) (Made available on Amazon from June 20, 2009)