

Unfair Competition	Date	May 31, 2024	Court	Osaka High Court, 8th Civil Division
	Case number	2023 (Ne) 2172		
- A case in which the court held that the Defendant's act in question does not constitute unfair competition (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act) but constitutes a tort.				

### Summary of Judgment

In this judgment, with respect to the Plaintiff's claim under the Unfair Competition Prevention Act, the court rendered a judgment substantially similar to the prior instance judgment (Osaka District Court, September 14, 2023, Case No. 2022 (Wa) 3392; see the court's website and Law & Technology, No. 102, p.95), finding that the name of the Plaintiff's Product cannot be considered as a famous indication of goods and business and therefore the act of selling the Defendant's Product does not constitute unfair competition under Article 2, paragraph (1), item (i) of the same Act. On the other hand, with respect to the tort claim, the court found that the Defendant had sold the Defendant's Product manufactured by a company different from that for the Plaintiff's Product, under a similar product name that seemed as if it were an update or improvement of the Plaintiff's Product, by using the same product pages on the websites formerly used for the Plaintiff's Product that have been accessed by its repeat consumers, without deleting customer review comments for the Plaintiff's Product. For these reasons, the court found that the Defendant is presumed to have intended to sell the Defendant's Product by taking advantage of consumers' misperception, and determined that such act of sale constitutes a tort as it deprives the Plaintiff of its customers by an illegal means of sale beyond the scope of free competition. In conclusion, the court modified the prior instance judgment and granted the Plaintiff's claim for compensation for damage.