

Unfair Competition, Copyright	Date	July 30, 2024	Court	Osaka District Court, 21st Civil Division
	Case number	2020 (Wa) 1539		
- A case in which the court dismissed the Plaintiff's claim for an injunction etc. of the Defendants' Product, etc. and claim for compensation for damage made on the grounds of unfair competition (unauthorized use of a trade secret, etc.) or infringement of a copyright to computer programming.				

### Summary of the Judgment

In this case, the Plaintiff, who manufactures and sells the Plaintiff's Product (mammography diagnostic imaging system), alleged that the Defendant Company acquired and used the Plaintiff's source codes and committed acts of unfair competition, including manufacturing and sale of the Defendants' Product (mammography interpretation diagnostic workstation) while knowing that there has been wrongful acquisition or improper disclosure of the Plaintiff's source codes by a former employee of the Plaintiff, or while not knowing that fact through gross negligence. Based on these allegations, the Plaintiff demanded under the Unfair Competition Prevention Act that the Defendant Company suspend manufacturing, sale, etc. of the Defendants' Product and destroy the Defendants' Product and the pieces of software stored in the Defendants' Product (the "Defendants' Pieces of Software"), and also demanded that the Defendants (Defendant Company and its representative) jointly and severally pay compensation for damage based on a joint tort as well as delay damages ([i]). Alternatively, the Plaintiff alleged that the Defendant Company infringes the Plaintiff's copyright (right of reproduction, adaptation right, and right of transfer) pertaining to the Plaintiff's source codes, which are works of computer programming. Based on these allegations, the Plaintiff demanded against the Defendants under the Copyright Act the same suspension and destruction as above and also suspension of reproduction, etc. of the Defendants' Pieces of Software, and payment of the same compensation for damage, etc. as above jointly and severally ([ii]).

The issues of this case are [i] whether the Plaintiff's source codes fall under trade secrets (whether they are kept secret), [ii] whether the Defendants' acts fall under acts of unfair competition (Article 2, paragraph (1), items (v), (viii), and (x) of the Unfair Competition Prevention Act), [iii] whether there is infringement of copyright to computer programming (right of reproduction, adaptation right, and right of transfer) in relation to the Plaintiff's source codes, [iv] whether a joint tort by the Defendant

Company's representative is established, [v] whether damage occurred and the amount of damage, and [vi] whether the injunction and destruction is necessary, etc.

In this judgment, regarding Issue [i], the court ruled that the Plaintiff's claims under the Unfair Competition Prevention Act are groundless on the grounds that the Plaintiff's source codes are not kept secret and are not found to fall under trade secrets, taking into account the fact that they had been poorly kept secret even in consideration of their importance.

Moreover, regarding issue [iii], the court ruled that for the three kinds of software contained in the Plaintiff's Product, out of six, for which the Plaintiff had not submitted the Plaintiff's source codes, the creativity (copyrightability) of said source codes and the fact of reproduction or adaptation by the Defendant Company had not been proven.

Regarding the remaining three kinds of software, the court ruled that the source codes of the Defendants' Product as of February to March, 2022 submitted by the Defendant Company are not found to be reproduction or adaptation of the Plaintiff's source codes even on the premise of the creativity (copyrightability) of the Plaintiff's source codes.

In addition, regarding the source codes of the Defendants' Product as of February to around September, 2018, for which the Plaintiff alleges copyright infringement, the Defendant Company alleges that it does not hold them and has not submitted them. The Plaintiff has not proven reproduction or adaption of the Plaintiff's source codes by comparing the source codes of the Defendants' Product with the Plaintiff's source codes, and even other evidence is not sufficient to find that the Defendants' Product was produced based on the Plaintiff's source codes. Furthermore, the court ruled that modification of the source codes of the Defendants' Product and deletion of the source codes of a past version by the Defendant Company are not found to be conducted for the purpose of preventing the adverse party (the Plaintiff) from using them and thus do not fall under prevention of proof (Article 224, paragraph (2) of the Code of Civil Procedure).

Therefore, the court determined that all the Plaintiff's claims are groundless without the need to make determinations concerning other issues as the Defendant Company is not found to infringe the Plaintiff's copyright to computer programming pertaining to the Plaintiff's source codes.