

Date	March 25, 2010	Court	Osaka District Court, 26th Civil Division
Case number	2009 (Wa) 11520		
<p>– A case in which the court dismissed all of the claims of the plaintiff in the counterclaim for an injunction against manufacturing, etc. of the product of the defendant in the counterclaim and for disposal thereof that were made based on a design right pertaining to a garbage box.</p>			

The plaintiff in the counterclaim, who holds a design right pertaining to a garbage box, alleged that the garbage box sold by the defendant in the counterclaim (the "Product of the Defendant in the Counterclaim") infringes said design right. Based on this allegation, the plaintiff in the counterclaim filed this counterclaim to seek an injunction against manufacturing, etc. of the Product of the Defendant in the Counterclaim and disposal thereof. Prior to this case, the same parties had engaged in an action for the declaration of non-existence of the right to claim an injunction based on said design right. However, this preceding principal action was withdrawn as this counterclaim was filed.

The issue of this case is whether the design of the Product of the Defendant in the Counterclaim is similar to the registered design (the "Registered Design") pertaining to the design right of the plaintiff in the counterclaim.

In this judgment, the court determined that the essential features of the Registered Design are [i] the shape of the front wall that is a smooth curbed surface gradually sloping back toward the bottom and [ii] the structure of a combination of the shape of this front wall, the big wheels, and the big footboard (a sense of unity of the design as a whole), taking into consideration parts to which general consumers would focus attention and the existence of publicly known designs.

As a result of observation of the essential features, the court ruled as follows: Although the shape of the front wall whose entire width gradually decreases toward the bottom, which is common in the design of the Product of the Defendant in the Counterclaim and the Registered Design, is one of the essential features, the impression thereof significantly differs depending on the specific way the front wall slopes back toward the bottom, i.e. in a curbed or linear fashion (a difference between said designs), and this difference rather can be regarded as deciding the impression of the shape of the front wall. In addition, with regard to the combination of the shape of the front wall, the wheels, and the footboard, which is also common in said designs, the court ruled that the impression of said combination is not so strong because it is a function-based common shape. On the other hand, the court ruled as follows: The

aforementioned difference pertaining to the specific way the front wall slopes back toward the bottom is the most distinctive point that pertains to the essential feature of the Registered Design, and the impression of this difference overwhelms the impressions of the common points; therefore, said designs can be regarded as having different visual aesthetic appeals.

Moreover, as a result of observation of the designs as a whole, the court found as follows: The Registered Design is a smart and stylish design that abstractly gives an impression of a water bird with its simple design consisting only of the smooth curbed front wall that slopes back toward the bottom, the handle, the footboard, and the wheels, while the ceiling surface of the lid body and both side surfaces of the body are made to be even plane surfaces; on the other hand, the design of the Product of the Defendant in the Counterclaim is a geometric and complex design using small and large surfaces wherein both the front wall and the ceiling surface of the lid body are composed of multiple surfaces that differ in the inclination, in which a mountain fold line can be seen around the center, and the rim of the flange part is of an angled shape that folds [down] downward. Based on this finding, the court determined that said designs also differ in the aesthetic appeal as a whole.

In conclusion, the court ruled that said designs cannot be regarded as similar to each other, and based on this ruling, it dismissed all of the claims of the plaintiff in the counterclaim.