

Unfair Competition	Date	July 8, 2024	Court	Tokyo District Court, 40th Civil Division
	Case number	2023 (Wa) 70654		
<p>- A case in which the court ruled that the title of a book "Makino Nihon Shokubutsu Zukan (An Illustrated Flora of Nippon, with the Cultivated and Naturalized Plants)" does not fall under the "indication of goods or business" referred to in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act.</p>				

Summary of the Judgment

MAKINO Tomitaro (1862-1957) is a person who is famous as a botanist and was, for example, used as a model for NHK's serialized TV drama titled "Ranman."

In 1940, the Plaintiff published a book written by MAKINO Tomitaro titled "Makino Nihon Shokubutsu Zukan Shohan (An Illustrated Flora of Nippon, with the Cultivated and Naturalized Plants: First Edition)." After that, it also published the following books: "Makino Nihon Shokubutsu Zukan Kaiteiban (An Illustrated Flora of Nippon, with the Cultivated and Naturalized Plants: Revised Edition)," "Makino Nihon Shokubutsu Zukan Zouhoban (An Illustrated Flora of Nippon, with the Cultivated and Naturalized Plants: Enlarged Edition)," "Makino Shin Nihon Shokubutsu Zukan (New Makino's Illustrated Flora of Japan)," "Kaitei Zouho Makino Shin Nihon Shokubutsu Zukan (New Makino's Illustrated Flora of Japan: Revised and Enlarged Edition)," "Shintei Makino Shin Nihon Shokubutsu Zukan (New Makino's Illustrated Flora of Japan: Newly Revised Edition)," "Shin Makino Nihon Shokubutsu Zukan (New Makino's Illustrated Flora of Japan)," "Shin Bunrui Makino Nihon Shokubutsu Zukan (New Makino's Illustrated Flora of Japan: New Systematics Edition)," and "Takujoban Makino Nihon Shokubutsu Zukan (An Illustrated Flora of Nippon, with the Cultivated and Naturalized Plants: Table Top Edition)" (hereinafter these books are collectively referred to as the "Pictorial Books").

On the other hand, on April 28, 2023, the Defendant published a book titled "Orijinarufukyuban Makino Nihon Shokubutsu Zukan (Makino's Illustrated Flora of Japan: Original Trade Edition)" (hereinafter referred to as the "Defendant's Book"), of which the author is MAKINO Tomitaro, under the name of Sanshiro Shokan.

In this case, the Plaintiff alleges against the Defendant, who is a former employee of the Plaintiff and publishes the Defendant's Book, that the indication used for the Defendant's Book "Makino Nihon Shokubutsu Zukan" (hereinafter referred to as the "Title") falls under the "indication of goods or business" prescribed in Article 2,

paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act and that the publishing or sale of the Defendant's Book with the Title falls under the act of unfair competition. Based on this allegation, the Plaintiff demands that the Defendant suspend the use of the Title based on Article 3, paragraph (1) of the Unfair Competition Prevention Act and also demands that the Defendant pay compensation for loss or damage of 10,095,000 yen and delay damages based on Article 4 of the Unfair Competition Prevention Act.

The major issue of this case is whether the Title falls under the "indication of goods or business" referred to in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act.

In this judgment, the court ruled that a title of a book does not fall under the "indication of goods or business" referred to in the same items unless there are special circumstances. The court then held as summarized below and determined that the Title is not found to fall under the "indication of goods or business" referred to in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act.

The Title, "Makino Nihon Shokubutsu Zukan," only simply indicates the content of the book, which is a Japanese botanical illustrated book written by MAKINO, and it is common as a title of a book, aside from the fact that the author, MAKINO, is distinct. Therefore, the Title does not have any distinctive feature that indicates the source of the book. According to evidence and the entire import of oral arguments, it is generally found that there are not a few books with the same title that are published by different publishers, etc. In consideration of the actual conditions of transaction pertaining to the finding, it cannot be said that a customer or trader immediately understands the Title as an indication of the source of the book when they see the Title.

In light of these circumstances, the Title cannot be considered to have the source identification function, and therefore, it cannot be found that there are the aforementioned special circumstances.

For the reasons described above, in this judgment, the court dismissed the Plaintiff's claims.