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Date of the judgement

2004.04.08
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Case Number

2003(Kyo)44
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Reporter

Minshu Vol. 58, No. 4
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Title

Decision concerning a suit to seek an injunction suspending an infringement by unfair competition under Article 3, para. 1 of the Unfair Competition Prevention Law and a suit to seek confirmation of the non-existence of the right to seek the injunction, and the applicability of Article 5, sub-para. 9 of the Code of Civil Procedure to them.
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Case name

Case of kokoku appeal by permission against the decision of the court of kokoku appeal to revoke the decision of the original court that had dismissed the motion for transfer
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Result

Decision of the First Petty Bench, quashed and remanded
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Court of the Second Instance

Nagoya High Court, Decision of September 8, 2003
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Summary of the judgement

Both a suit to seek an injunction suspending an infringement by unfair competition under

Article 3, para. 1 of the Unfair Competition Prevention Law and a suit to seek confirmation of the non-existence of the right to seek an injunction constitute a suit prescribed in Article 5, sub-para. 9 of the Code of Civil Procedure.

References

Article 5, sub-para. 9 of the Code of Civil Procedure and Article 3, para. 1 of the Unfair Competition Prevention Law

Article 5, sub-para. 9 of the Code of Civil Procedure

A suit prescribed by either of the following subparagraphs may be filed before the court governing the place designated by the applicable subparagraphs:

(9) a suit relating to a tort: the place of the tort

Article 3, para. 1 of the Unfair Competition Prevention Law

A person whose business interests are infringed or are likely to be infringed by unfair competition is entitled to request an injunction preventing or suspending such infringement against the person who is infringing such business interests or is likely to do so.

Main text of the judgement

The decision of the second instance shall be quashed.

This case shall be remanded to the Nagoya High Court.

Reasons

Concerning the grounds for the kokoku appeal argued by the counsel for kokoku appeal AKAO Naoto

1. According to the record, the outline of the history of this case is as follows.

The kokoku appellant filed a suit (hereinafter referred to as the "Suit") at the Nagoya District Court to seek declaration that the opposite party did not have a right to seek an injunction under the Unfair Competition Prevention Law against the sales or export by the kokoku appellant of the products indicated in Lists 1 and 2 appended to the decision of the first instance (hereinafter referred to as the "Products"), on the ground that the act of selling or exporting the Products did not fall under the category of unfair competition prescribed in Article 2, para. 1, sub-para. 1 of the Unfair Competition Prevention Law.

The kokoku appellant argued that the kokoku appellant exported the Products from the Nagoya Port, and therefore the Nagoya District Court governing this place had jurisdiction over the Suit pursuant to Article 5, sub-para. 9 of the Code of Civil Procedure.

In response to this argument, the opposite party filed a motion to transfer the proceedings for the Suit to the Osaka District Court governing the opposite party's address pursuant to Article 16, para. 1 or Article 17 of the Code of Civil Procedure, arguing that Article 5, sub-para. 9 of the Code of Civil Procedure should not apply to the Suit and therefore the Nagoya District Court did not have jurisdiction over the Suit, and even if at all the Nagoya District Court had jurisdiction, the proceedings for the Suit should be transferred to another court in order to avoid delay in the proceedings or in order to ensure fairness for the parties.

2. The court of the second instance rendered a decision to transfer the proceedings for the Suit to the Osaka District Court pursuant to Article 16, para. 1 of the Code of Civil Procedure, holding that it cannot say that a tort was generally recognized as an act always bringing about the right to seek restitution or right to seek an injunction, that the right to seek an injunction under the Unfair Competition Prevention Law that was claimed in the Suit was only accepted as one of quasi-property rights given only under the provisions of individual statutes, and, therefore, the Suit did not constitute "a suit relating to a tort" prescribed in Article 5, sub-para. 9 of the Code of Civil Procedure and therefore did not come under the jurisdiction of the Nagoya High Court.

3. However, the decision of the second instance outlined above cannot be accepted for the following reasons.

Article 5, sub-para. 9 of the Code of Civil Procedure allows, giving consideration to the convenience of the parties concerned in presenting evidence, etc., a "suit relating to a tort" to be filed at a court governing the "place of the tort." In light of the purport, etc. of this provision, it is appropriate to construe that the definition of a "suit relating to a tort" includes not only a suit arising from a tort prescribed in the Civil Code but also includes a suit filed by a person whose right or interests are infringed or are likely to be infringed by an illegal act in order to seek an injunction preventing or suspending such infringement.

The Unfair Competition Prevention Law defines the types of acts of "unfair competition," such as the act of using a goods or other indication which is identical with, or similar to, another person's goods or other indication which is well-known among consumers, thereby causing confusion with another person's goods or business (Article 2, para. 1), and allows a person whose business interests are infringed or are likely to be infringed by "unfair competition" to request an injunction preventing or suspending such infringement against the person who is infringing such business interests or is likely to do so (Article 3, para. 1).

In light of the construction of Article 5, sub-para. 9 of the Code of Civil Procedure detailed above, both a suit to seek an injunction suspending an infringement by unfair competition under Article 3, para. 1 of the Unfair Competition Prevention Law and a suit to seek declaration of non-existence of the right to seek an injunction constitute a suit prescribed in Article 5, sub-para. 9 of the Code of Civil Procedure.

For this reason, the Suit constitutes a suit prescribed in the said sub-paragraph, and the decision of the second instance contains an apparent violation of laws that has affected the decision. The kokoku appellant's argument is well-grounded and the decision of the second instance should inevitably be quashed. For further examination on the appropriateness of the transfer of the proceedings for the Suit pursuant to Article 17 of the Code of Civil Procedure, this case shall be remanded to the court of the second instance.

Therefore, the decision was rendered in the form of the main text by the unanimous consent of the Justices.

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Presiding judge

Justice SHIMADA Niro

Justice KAINAKA Tatsuo

Justice YOKOO Kazuko

Justice IZUMI Tokuji

Justice SAIGUCHI Chiharu

(This translation is provisional and subject to revision.)