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Title

The judgment concerning what kind of religious activities carried out by a religious corporation are included in the term "business" provided in Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act

Case name

Case to seek injunction against the use of name

Result

Judgment of the Second Petty Bench, dismissed

Court of the Second Instance

Tokyo High Court, Judgment of December 16, 2004

Summary of the judgement

1. The term "business" provided in Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act does not include principally religious activities carried out by a religious corporation or other business that are aloes and inseparably related to such activities.

2. A religious corporation has the right to protect its name from being misused by other religious corporations, and if the right is illegally infringed, it may request the injunction of infringement from the perpetrator.

3. Where, upon the abolition of the relationship of control with a religious corporation X whose name is "Tenrikyo," another religious corporation Y has changed its name from "Tenrikyo Toyofumi Bunkiyokai" to "Tenrikyo Toyofumi Kyokai," given the facts that Y has been using the name containing the term "Tenrikyo" for many years, Y's doctrine is generally recognized as nothing but "Tenrikyo" among the public, and Y does not seem to have any unfair intention to take advantage of the popularity of X's name, Y's act of using the name "Tenrikyo Toyofumi Kyokai" cannot be deemed to be infringing X's right to protect its name from misuse.

References

(Concerning 1) Article 1 and Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act, Article 6 of the Religious Corporation Act

(Concerning 2 and 3) Article 2, Article 198, and Article 199 of the Civil Code, Article 13 of the Constitution, Article 12, para.1 item 2 of the Religious Corporation Act

Article 1 of the Unfair Competition Prevention Act

(Purpose)

The purpose of this Act is to provide for such matters as measures for prevention of unfair competition and damages caused by unfair competition, in order to ensure fair competition among business operators and accurate implementation of international agreements related thereto, and thereby to contribute to the sound development of the national economy.

Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act

The term "unfair competition" as used in this Act shall mean any of the following:

(i) acts of creating confusion with other person's goods or business by using an indication of goods or business (which means a name, trade name, trademark, mark, container or package of goods, or any other indication of a person's goods or business used in relation to a person's business; the same shall apply hereinafter) that is identical or similar to said other person's indication of goods or business that is well-known among consumers, or by transferring, delivering, exhibiting for the purpose of transfer or delivery, exporting, importing or providing through an electric telecommunication line goods using such an indication;

(ii) acts of using an indication of goods or business that is identical or similar to other person's famous indication of goods or business, as one's own, or acts of transferring, delivering, exhibiting for the purpose of transfer or delivery, exporting, importing or providing through an electric telecommunication line goods using such an indication;

Article 6 of the Religious Corporation Act

(1) A religious corporation may operate public welfare undertakings.

(2) A religious corporation may operate business other than public welfare undertakings unless the business are contrary to its purpose. In this case, any profits arising from such business shall be used for the religious association that controls the religious corporation or other religious corporations or public welfare undertakings that are supported by the religious corporation.

Article 2 of the Civil Code

(Standard for construction)

This Code shall be construed from the standpoint of the dignity of individuals and the essential equality of the genders.

Article 198 of the Civil Code

(Action for maintenance of possession)

If a possessor is hindered in his possession, he may, by an action for maintenance of possession, demand discontinuance of such hindrance as well as damages.

Article 199 of the Civil Code

(Action for preservation of possession)

If a possessor is likely to be hindered in his possession, he may, by an action for preservation of possession, demand prevention of such hindrance or security for damages.

Article 13 of the Constitution

(Respect of individuals and public welfare)

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 12(1) of the Religious Corporation Act

(Procedure for establishment)

A person who intends to establish a religious corporation shall prepare a regulation providing

for the matters listed below and obtain certification for the regulation from the competent ministry.

(ii) Name

Main text of the judgement

The appeal to the court of the last resort shall be dismissed.

The appellant at the court of the last resort shall bear the cost of the appeal.

Reasons

I. Outline of the case

1. The outline of the facts legally determined by the court of the second instance is as follows.

(1) The appellant at the court of the last resort is a religious corporation engaging in religious activities based on the doctrine of Tenrikyo, a religion founded by P. According to its regulation, the purpose of the appellant is to "spread the doctrine to attain Yoki Gurashi (joyous life) for all humanity as the Parent-God, Tenri-O-no-Mikoto, wishes, perform religious ceremonies and rites, edify and foster followers, control churches, and operate other affairs and business to achieve the purpose of this religions association." Churches under the control of the appellants are divided into the Church Headquarters and general churches. There are more than 16,000 general churches, which are named "Tenrikyo...Daikyokai" or "Tenrikyo...Bunkiyokai" The name of the appellant is known.

(2) The predecessor of the appellee at the court of the last resort was Tenrikyo Toyofumi Senkyojo established with permission of Nagano Prefecture Governor as of June 17, 1925. Upon establishment, consent was obtained from the predecessor of the appellant, Q Q Q. The name "Tenrikyo Toyofumi Senkyojo" was subsequently changed to "Tenrikyo Toyofumi Bunkiyokai." The term "Toyofumi" contained in the name derived from the place-name of the location, Fumide, Toyoda-mura, Suwa-gun (currently O-aza Toyoda, Suwa City), Nagano Prefecture. After the Religious Corporation Act came into force, Tenrikyo Taryofumi Bunkiyokai, as an organization under the control of the appellant, became a religious corporation under the Religious Corporation Act on July 17, 1953. This is the history of the appellee.

(3) A, since assuming the post of the representative officer of the appellee, came to believe that the appellant's doctrine was deviated from the teachings of the founder P, and started to disobey the rules of the Tenrikyo scripture developed by the Tenrikyo Church Headquarters. When the appellant instructed A to follow the Tenrikyo scripture, A resisted the instruction, and as a result, the appellee sent the appellant a written notice as of July 3, 2001, stating that the

appellee would abolish the relationship of the control with the appellant. On April 16, 2003, the appellee obtained certification from Nagano Prefecture Governor for the revision of its regulation associated with the abolition of the relationship of control with the appellant, and its name was changed to "Tenrikyo Toyofumi Kyokai." Under the revised regulation, the purpose of the appellee is to "according to the basic principle for foundation advocated by the founder P, i.e. realize a joyful world for all humanity, spread the founder's teachings of Mikagura-Uta and Ofudesaki, perform religious ceremonies and rites, edify and develop followers, and operate other affairs to achieve the purpose of this church."

(4) Even after the abolition of the relationship of control with the appellant, the appellee continues to carry out religious activities according to the scripture containing P's teachings, such as morning and evening services and annual events including monthly festivals, while using the name "Tenrikyo Toyofumi Kyokai" for its religious activities. The appellee currently does not operate any profit-making business and has no plan to operate such business in the near future.

2. In this case, the appellant, alleging that the appellee's act of using the name "Tenrikyo Toyofumi Kyokai" constitutes unfair competition provided in Article 2, para.1 item 1 or item 2 of the Unfair Competition Prevention Act or infringes the appellant's right to name, requests the appellee to stop using "Tenrikyo Toyofumi Kyokai" and any other names containing "Tenrikyo" and proceed the cancel registration of the name.

II. Concerning Reason 1 for the petition for acceptance of appeal to the court of the last resort argued by the appeal counsels IMANAKA Michinobu, et al.

Article 1 of the Unfair Competition Prevention Act provides that the purpose of the said Act is to provide for such matters as measures for prevention of unfair competition and damages caused by unfair competition, in order to ensure fair competition among business operators and accurate implementation of international agreements related thereto, and thereby to contribute to the sound development of the national economy. Furthermore, the "Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967" provides that "Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition" (Article 10-2(2)). The Convention regards the prevention of acts of unfair competition as the object of protection of industrial property (Article 1(2)), and requires the countries of the Union to assure to nationals of such countries effective protection against unfair competition (Article 10-2, para.1). The old Unfair Competition Prevention Act enacted in

1934 (prior to the revision by Act No. 47 of 1993) was developed in order to satisfy the requirement under the Convention as revised at The Hague. In light of these provisions and the history since the enactment of the old Act, the Unfair Competition Prevention Act can be construed to be particularly intended to prevent, on the premise of commercial society where free competition is expected under the guarantee of freedom of business, acts of competition between parties engaging in economic activities that go beyond the bounds of free competition and constitute an abuse of freedom of business or disturb fair competitive order for the whole of society, regarding such acts as unfair competition. Assuming that, this Act should be widely applied to areas where such competitive order must be maintained, and therefore even such undertakings that are not commonly regarded as profit-making business cannot always escape from being subject to the Act. However, it should be construed that the Act may not apply to such undertakings that cannot be regarded as business activities in commerce. Among activities carried out by a religious corporation, principally religious activities such as the performing of religious rites and diffusing of the doctrine are not performed in commerce under principles of free competition and the guarantee of freedom of business, and therefore cannot be presumed to be intended to maintain competitive order as intended under the Unfair Competition Prevention Act. For this reason, it is appropriate to construe that such activities cannot be regarded as business activities in commerce and therefore should be excluded from the scope of the Act. Regarding undertakings that appear to be operated as profit-making business but are inseparably related to principally religious activities, such as the publishing of books and holding of lectures for the purpose of diffusing the doctrine, it is inappropriate to treat such undertakings separately from principally religious activities, and therefore they should be excluded from the scope of the Act. On the other hand, a religious corporation's undertakings that may be operated by non-religious entities from the perspective of competition in commercial society, e.g. the operating of a parking business for the purpose of making profit (see Article 6, para.2 of the Religious Corporation Act), should be deemed to be subject to the Unfair Competition Prevention Act.

As unfair competition, Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act sets forth acts of using an indication of goods or business (which means a name, trade name, trademark, mark, container or package of goods, or any other indication of a person's goods or business used in relation to a person's business) that is identical or similar to the said other person's indication of goods or business, and assigning goods using such an indication. Based on the understanding of the Unfair Competition Prevention Act mentioned above, the meaning of the term "business" should be construed to be based on the premise of competition in commercial society, and therefore it is appropriate to construe that the term "business" does not include principally religious activities carried out by a religious corporation or other

undertakings that are inseparably related to such activities.

As mentioned above, the appellee uses the name "Tenrikyo Toyofumi Kyokai" only for its essentially religious activities such as morning and evening services and annual events including monthly festivals. The appellee currently does not operate profit-making business and has no plan to operate such undertakings in the near future. According to these facts, the name does not fall under the category of "an indication of goods or business" provided in Article 2, para.1 items 1 and 2 of the Unfair Competition Prevention Act, and therefore the appellee's act of using the name does not constitute unfair competition provided in these items. The determination of the court of the second instance that goes along with this reasoning can be accepted as justifiable. The appellant's argument cannot be accepted.

III. Concerning Reasons 5 to 8 for the petition for acceptance of appeal to the court of the last resort argued by the appeal counsels IMANAKA Michinobu, et al.

1. A name is a symbol of the individual's personality and constitutes part of the moral right; therefore, individuals have the right to protect their name from being misused by others (See 1983 (O) No. 1311, judgment of the Third Petty Bench of the Supreme Court of February 16, 1988, Minshu Vol. 42, No. 2, at 27). It is appropriate to construe that a person whose right to name has been illegally infringed may seek damages from the infringer and may also request injunction to eliminate the infringement that is currently ongoing or prevent an infringement that may occur in the future (See 1981 (O) No. 609, judgment of the Grand Bench of the Supreme Court of June 11, 1986, Minshu Vol. 40, No. 4, at 872). A religious corporation also has personal interest, and as in the case of an individual's name, its name should be protected as its symbol. Therefore, it should be construed that a religious corporation also has the right to protect its name from being misused by other religious corporations, and if the right is illegally infringed, it may request the infringer to stop the infringement.

On the other hand, a religious corporation has freedom to select and use its name (hereinafter referred to as "freedom to use one's name") as part of its personal interest relating to its name. Generally, religious corporations use names containing terms that simply indicate their doctrines. This may be because religious corporations are distinguished from other religious corporations by their doctrines, and such use of names seems to be reasonable and necessary. Therefore, religious corporations' freedom to use their name should be construed to include freedom to use names containing terms that simply indicate their doctrines. Considering that protection for a religious corporation X's name may restrict another religious corporation, Y's freedom to use its name, it is therefore absolutely necessary to give consideration to Y's freedom to use its name when determining whether or not to prohibit Y from using its name. In particular, where both X's name and Y's name contain terms that indict their doctrines, if, when determining whether

or not to stop Y using its name, attention is given only to the fact that these names are identical or similar to each other, Y's freedom to use its name would be restricted, resulting in unreasonable restriction and serious disadvantage to Y's religious activities. In addition, such a consequence goes against the legislative purport of the Religious Corporation Act that does not prohibit religious corporations from using names that are identical or similar to other religious corporations.

Consequently, where a name that is identical or similar to the name of a religious corporation X is used by another religious corporation Y, whether or not Y's use of its name illegally infringes X's right to protect its name from misuse should be determined by comprehensively considering various circumstances, including not only whether or not their names are identical or similar, but also whether or not X's name is well known and to what extent it is known, whether or not these names can be distinguished from each other, under what circumstances Y started to use its name, and in what manner Y currently uses its name.

2. In this case, as mentioned above, the appellant's name "Tenrikyo" is well known, and the appellant is likely to suffer considerable disadvantage if its name is misused. Furthermore, since the appellant controls many churches under a uniform name, its right to protect its name from misuse includes the right to protect the names of general churches under its control, "Tenrikyo...Daikyokai" and "Tenrikyo...Bunkiyokai" from misuse. It is obvious that the appellee's name "Tenrikyo Toyofumi Kyokai" is similar to and may cause confusion with these names.

However, according to the facts mentioned above, the appellee has carried out religious activities under the name "Tenrikyo Toyofumi Kyokai" for about 50 years since it became a religious corporation under the Religious Corporation Act, and if the period during which its predecessor used the name "Tenrikyo Toyofumi Senkyojo" is taken into account, the appellee has used names containing the term "Tenrikyo" that indicates its doctrine for about 80 years. Given such circumstances, if the appellee intends to select a name that maintains continuity from the predecessor's name and indicate its doctrine, there is no option but to select a name that is very similar to its current name. Although the appellee has abolished the relationship of the control with the appellant and made a clear distinction from the appellant, the appellee is still a religious corporation that follows P as the founder and carries out religious activities according to the scripture based on her teachings, and its doctrine is generally recognized as nothing but "Tenrikyo" among the public. The appellee does not seem to have any unfair intention to take advantage of the popularity of the appellant's name. In light of these circumstances, it is reasonable for the appellee to include the term "Tenrikyo" that indicates its doctrine in its name, and it is obvious that if the appellee is prohibited from using its name, this

would cause disturbance to the appellee's religious activities, resulting in serious disadvantage to the appellee. As far as the term "Tenrikyo" indicates the doctrine, it is inevitable, because of the nature of a religious corporation, that the appellant will lose the monopoly over names containing the term "Tenrikyo" as its doctrine diffuses and spreads widely.

Comprehensively considering these circumstances, even though the appellant is likely to suffer considerable disadvantage because of the fact that the appellee uses a name that is similar to the appellant's name, the appellant's right to protect its name from misuse cannot be deemed to be illegally infringed. The determination of the court of the second instance, which dismissed the appellant's claim to seek injunction based on its right to protect its name from misuse, goes along with this reasoning and therefore can be accepted. The appellant's argument cannot be accepted.

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

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Presiding judge

Justice IMAI Isao

Justice TAKII Shigeo

Justice TSUNO Osamu

Justice NAKAGAWA Ryoji

Justice FURUTA Yuki

(This translation is provisional and subject to revision.)