

Date	September 20, 2012	Court	Osaka District Court, 21st Civil Division
Case number	2010 (Wa) 16066		
– A case wherein, with respect to a hair dryer, the court dismissed the claims made on the grounds of infringement of the design right and the application of Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.			

In this case, the plaintiff, who used to hold a design right (the "Design Right") for a hair dryer used at barber shops and hair salons and is engaged in the manufacture and sale of the plaintiff's product (hair dryer), claimed against the defendant, who is engaged in the sale of the defendant's product (hair dryer), compensation for damages based on infringement of the Design Right and an injunction and destruction of the defendant's product as well as compensation for damages on the grounds that the defendant's act constitutes the act of unfair competition prescribed in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.

The issues in this case are [i] whether or not the design of the defendant's product (the "defendant's design") is similar to the design in question (the "Design"); [ii] whether or not the configuration of the plaintiff's product falls under the indication of well-known goods, etc. (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act); [iii] whether or not the configuration of the defendant's product is similar to that of the plaintiff's product; [iv] whether or not confusion is likely to be caused between the plaintiff's product and the defendant's product; [v] whether or not the plaintiff has suffered or is likely to suffer infringement of business interests; and [vi] the amount of damages payable to the plaintiff.

In this judgment, with respect to Issue [i], the court took into account the mode of use of the plaintiff's product and publicly known designs and found that the essential part of the Design lies in the specific shapes of the shade part, cylindrical part and supporting part of the hair dryer. Based on such finding, the court examined the common features and differences between the Design and the defendant's design and found that the two designs give different impressions to consumers and differ in terms of their aesthetic impression and thus the Design cannot be found to be similar to the defendant's design. In addition, with respect to Issue [ii], the court found that, although the configuration of the plaintiff's product had unique characteristics, such configuration cannot be found to have been well-known among consumers as the plaintiff's indication of goods, etc. in 2006, when the defendant's product was put on the market, and thereby dismissed all of the plaintiff's claims.