

Unfair Competition	Date	June 18, 2019	Court	Tokyo District Court, 46th Civil Division
	Case number	2017 (Wa) 31572		
- A case in which claims for injunction and compensation for damage were affirmed on the ground of an act of unfair competition of selling goods similar to the form of Plaintiff's goods (bag) (Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act).				

Summary of the Judgment

This case is a case in which Plaintiffs asserted that the form of Plaintiffs' goods, in which triangular pieces are disposed so as to be placed on the surface of a bag so that they are bent at various angles in accordance with the shape of articles put therein and form a three-dimensional and changeable shape, is Plaintiffs' famous or publicly-known indication of goods or business, that sales of the goods that are identical or similar to the aforementioned form by Defendant falls under an act of unfair competition prescribed in Article 2, paragraph (1), item (i) or (ii) of the Unfair Competition Prevention Act, and copyrightability is found in the form and thus, the selling act by Defendant infringes Plaintiffs' copyright (right of reproduction or adaptation rights), and claimed injunction of manufacture/sales and the like of Defendant's goods, and compensation for damage and the like.

There are four major issues in this case; that is, [i] whether the form of Plaintiffs' goods falls under the indication of goods or business; [ii] presence/absence of similarity and a concern of confusion of Defendant's goods; [iii] copyrightability of Plaintiffs' goods; and [iv] the amount of damages.

The judgment judged for each of the aforementioned issues as follows and partially affirmed Plaintiffs' claims.

- [i] The form of Plaintiffs' goods has a feature explicitly different from the form of conventional bags for women and the like, and the uniqueness and novelty of the design have been taken up by many kinds of media and given a strong impact to consumers and thus, special conspicuousness is found.
- [ii] The appearance of Defendant's goods is similar to Plaintiffs' goods in a state with articles therein, and it cannot be considered that a different feature between the two can be discriminated when the both goods are observed at a distance.
- [iii] The feature of Plaintiffs' goods is within a feature for use with a practical purpose, and the feature provided with aesthetic structure that can be appreciated from an aesthetic viewpoint cannot be grasped aside from this

feature for use with a practical purpose and thus, copyrightability cannot be found.

- [iv] By considering the price ranges of the respective goods and the fact that both are belong to the same group (clothing, etc.), a considerable price difference of approximately 13 times between Plaintiffs' goods and Defendant's goods can fall under the circumstances hindering a causal link in a scene where compensation for damage on the ground of Article 5, paragraph (1) of the Unfair Competition Prevention Act is claimed, and it is reasonable to find that there were "circumstances that sales cannot be performed" prescribed in the proviso of the same paragraph with regard to the quantity equivalent to 90% of the sold quantity of Defendant's goods.