

Design Right	Date	March 28, 2019	Court	Osaka District Court, 26th Civil Division
	Case number	2017 (Wa) 5011		
- A case in which the court held that the act of indicating the words, "日本仕上げ" [meaning "finishing touch in Japan" in Japanese], on the package of a nail clipper falls under unfair competition (an indication that misleads the public as to quality, etc.), and approved an injunction against making the indication and a claim for compensation for damage.				

Summary of the Judgment

The present case is one in which Plaintiff, who sells nail clippers, demanded against Defendant, who sells three types of nail clippers with the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese] on the package (Defendant's Products), for an injunction against making the indication and for compensation for damage pursuant to Article 4 of the Unfair Competition Prevention Act, by asserting that Defendant's act falls under unfair competition (an indication that misleads the public as to the place of origin or quality, etc.).

Concerning a part of Defendant's Products, Plaintiff made a claim for an injunction and a claim for compensation for damage on the basis of design right infringement and applicability of unfair competition as stipulated in of Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act. In response, Defendant did not argue against the infringement theory which stated that a part of Defendant's Products belongs to the scope of effect covered by Plaintiff's design right, or that a part of Defendant's Products falls under unfair competition as stipulated in Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act.

Plaintiff asserted that the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese] on Defendant's Products misleads the public as to the place of origin (the country of origin) as well as the quality, content, and manufacturing method.

In the judgment of the present case, the court found that customers, upon seeing the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese], would acknowledge that a battery of work from start to finish of manufacturing nail clippers takes place in a foreign country, and that the work of giving the finishing touches on the products to achieve better shapes and conditions takes place in Japan. On that premise, the court also took into consideration that Defendant's Products clearly indicated "Made in China", and held that the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese], which would be recognized by

customers in the manner described above, cannot be considered to be an indication stating that Japan is the place of origin, and did not acknowledge such indication to be an indication that misleads the public as to the place of origin.

Furthermore, concerning the assertion that the indication misleads the public as to quality, the court determined that an indication that misleads the public to indirectly make a presumption as to quality also falls under an indication that misleads the public as to "quality". On that premise, the court held that whether or not the "仕上げ" [meaning "finishing touch" in Japanese] was performed in Japan is a fact that leads customers to indirectly make a presumption as to the quality, because customers who believe that the "仕上げ" [meaning "finishing touch" in Japanese] on nail clippers was performed in Japan would perceive the quality in terms of sharpness and operability having improved in one way or another.

Given the circumstances described above, in the present case, the parties argued over what specific work was performed by Defendant in Japan. In the judgment of the present case, the court determined, concerning the work which Defendant asserts to have been performed and which can be found to be have taken place in Japan based on evidence, that the work which can be recognized as being performed in Japan cannot be evaluated as constituting the work of "仕上げ" [meaning "finishing touch" in Japanese], so that no work which can be evaluated as "仕上げ" [meaning "finishing touch" in Japanese] was performed at all in Japan. Accordingly, the court held that the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese] falls under an indication that misleads the public as to the quality (as well as an indication that misleads the public as to the content and manufacturing method), and approved a claim for an injunction and a claim for discarding of packages and the like.

Furthermore, concerning Plaintiff's claim for compensation for damage, Defendant asserted that Plaintiff suffered no damage and argued against the applicability per se of the provision of presumption as stipulated in Article 5, paragraph (2) of the Unfair Competition Prevention Act. However, in the judgment of the present case, the court held that in confined situations such as the shops of sellers (retail stores) of Defendant's Products, Plaintiff's nail clippers could be substantially influenced by the indication of "日本仕上げ" [meaning "finishing touch in Japan" in Japanese], and acknowledged that Plaintiff suffered the damage of lost profits. Next, since Defendant's Products are found to be misleading in terms of quality, etc., in addition to being in violation of a design right and of Article 2, paragraph (1), item (i) of the Unfair Competition Prevention Act, the court considered the ratio of overturning of presumption according to each product, and acknowledged that the presumption

concerning the indication that misleads the public as to quality, etc. shall be overturned by 90%, and approved Plaintiff's claim for compensation for damage within the extent of approximately 760,000 yen.