

judgedate:

June 4, 1965

caseid:

1963 (O) 1149

casename:

A case of seeking injunction against act of unfair competition

casetitle:

Judgment regarding whether or not a low-malt beer, which is classified as "zoshu" ["other liquor"] and which indicates "ライナー" as the product name and "ライナービヤ株式会社" as the name of the manufacturer, is misleading as to the product being a "beer".

summary_judge:

It is reasonable to interpret that the act of indicating, simply, "ライナー" as the product name on the container, packaging, and advertisement for a low-malt beer, which is classified as "zoshu", in addition to indicating the trade name of the manufacturer, "ライナービヤ株式会社", and its English name, "LINER BEER Co., LTD.", is not immediately misleading as to the product being a "beer", or does not immediately create confusion with a "beer".

court second:

Tokyo High Court, Judgment of May 29, 1963

references:

Article 1, item (v) of the Unfair Competition Prevention Act

Main text

The final appeal shall be dismissed.

Appellant shall bear the court cost of the final appeal.

Reasons

Regarding Reason 1 for the final appeal according to the attorneys representing Appellants, namely; ●●●●, ●●●●, ●●●●, ●●●●, ●●●●, and ●●●●.

Even if Appellee Company indicates, simply, "ライナー" as the product name on the container, packaging, and advertisement for the Product manufactured by Appellee Company, in addition to indicating Appellee Company's trade name, "ライナービヤ ー株式会社", and its English name, "LINER BEER Co., LTD.", thereon, it is reasonable to interpret, based on the empirical rule, that the indications are not immediately misleading and do not create confusion with the beers manufactured by Appellant Companies. Accordingly, there is no illegality, as per the asserted opinion, with the ruling made by the court of prior instance whose purport is the same as the above.

The ruling made by the court of prior instance to the effect that, in the case where the indication of a trade name placed on the container and packaging of a product is based on the provisions of Article 86-5 of the Act on Securing of Liquor Tax and on Liquor Business Associations and Article 8-3 of the Order for Enforcement of the same Act, an injunction against the use of such indication cannot be sought pursuant to Article 1, item (v) of the Unfair Competition Prevention Act, constitutes a so-called supportive argument, which clearly does not influence the conclusion of the judgment in prior instance. As such, the asserted opinion which attacks the above ruling by considering it to be illegal cannot constitute lawful grounds for the final appeal.

Therefore, the gist of the argument is entirely groundless.

Regarding Reason 2 for the final appeal.

The indication of "ライナービヤ ー" consists of a proper noun, "ライナー", to which a common noun, "ビヤ ー", is added, and it goes without saying that these nouns can be separated. The court of prior instance held that, if Appellee Company merely indicates "ライナー" on the container, packaging, and advertisement for the Product manufactured by Appellee Company, it is not misleading and does not create confusion with the beers that are manufactured and sold by Appellant Companies in regards to the description of the quality of the Product, so that an injunction cannot be sought for the indication of "ライナー", let alone for the indication of "ビヤ ー", and this ruling made by the court of prior instance is justified in light of the conventional wisdom. Accordingly, there is no illegality with the judgment in prior instance, as per the

asserted opinion, and the asserted opinion, which eventually attributes to an attack being made against the judgment in prior instance by taking a stance that is different from the one described above, cannot be accepted.

Regarding Reason 3 for the final appeal.

The judgment of the court of prior instance to the effect that it cannot be acknowledged that there is a risk of Appellee Company using the indication of "LINER BEER" for Product, either currently or in the future, is reasonable in light of the evidence submitted. Accordingly, the judgment in prior instance has no illegality, as per the asserted opinion, and the asserted opinion, which eventually attributes to an attack being made against the ruling made about the evidence and against the fact finding by the court of prior instance, which belongs to the exclusive right of the court of prior instance, cannot be accepted.

Regarding Reason 4 for the final appeal.

The judgment of the court of the prior instance to the effect that it is very unlikely that Appellee Company currently manufactures and sells "ライナー黒ビヤ" is reasonable in light of the evidence submitted. Accordingly, there is no illegality with the judgment in prior instance, as per the asserted opinion, and the asserted opinion, which eventually attributes to an attack being made against the ruling about the evidence and against the fact finding by the court of prior instance, which belongs to the exclusive right of the court of prior instance, cannot be accepted.

Regarding Reason 5 for the final appeal.

The court of prior instance held that it cannot be said that the mere fact that Appellee Company uses the alphabetic letters, "LINER", "LINER BEER", and "LINER BEER Co., LTD.", and the like in labels and advertisements for Appellee Company's products, along with Japanese texts, can be considered to cause a risk that Appellee Company will export these products overseas. This judgment is justified in light of the empirical rule. Accordingly, the judgment in prior instance has no illegality, as per the asserted opinion, and the gist of the argument is groundless.

Therefore, the judgment of this court is rendered unanimously by all judges, as per the main text, by application of Articles 401, 95, 89, and 93 of the Code of Civil Procedure.

Supreme Court, Second Petty Bench

Presiding judge:	OKUNO Kenichi
Judge:	YAMADA Sakunosuke
Judge:	KUSAKA Asanosuke
Judge:	KIDO Yoshihiko

Judge:

ISHIDA Kazuto