

judgedate:

October 13, 1981

caseid:

1979 (O) 145

casename:

A case of seeking injunction pursuant to the Unfair Competition Prevention Act

casetitle:

Judgment concerning the confusion of goods as stipulated in Article 1, paragraph (1), item (i) of the Unfair Competition Prevention Act and the "person whose business interests are likely to be harmed" as stipulated in the main clause of the same paragraph.

summary\_judge:

1. In the case where confusion with the goods of another person, as stipulated in Article 1, paragraph (1), item (i) of the Unfair Competition Prevention Act, is acknowledged as a fact, it should be said, unless there are special circumstances, that said another person constitutes a person whose business interests are likely to be harmed.
2. The act by a holder of a trademark right of using a mark which is similar to a registered trademark does not fall under the "act which is acknowledged as exercising of a right pursuant to the Trademark Act" as stipulated in Article 6 of the Unfair Competition Prevention Act.

court second:

Tokyo High Court, Judgment on October 25, 1978

references:

Article 1, paragraph (1), item (i) of the Unfair Competition Prevention Act, Article 6 of the Unfair Competition Prevention Act, Article 25 of the Trademark Act, Article 36 of the Trademark Act, Article 37 of the Trademark Act

Main text

The final appeal shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

Regarding Reason No. 1.1 for the final appeal according to Appellants' attorney, ●●●●.

It is evident, in light of the texts of the judgment of the first instance and the judgment in prior instance, that the part, which was pointed out in the asserted opinion and with respect to which the ruling was made in the judgment in prior instance to the effect that the parties are not in dispute over said part, is the part which was determined, as per the indication of facts in the judgment of the first instance, as cited in the judgment in prior instance, to be the part over which the parties are not in dispute. Furthermore, it is evident from records that Third Preparatory Brief submitted by Appellants, as pointed out in the asserted opinion, was not stated on the date for oral arguments during the trial of the prior instance. Accordingly, there is no illegality with the judgment in prior instance as per the asserted opinion. The gist of the argument cannot be accepted.

Regarding Reason No. 1.3 for the final appeal.

In light of the background to how the Mark, which is used by Appellee, came to be widely recognized in Japan and came to be acknowledged as a well-known mark with significant distinctiveness, and the background to how the Mark, which is used by Appellants, came to be used, and the facts relating to the chronological order for the use of the two marks, as per the findings of the court of prior instance, and in light of the explanation provided in the judgment in prior instance based on these findings, it can be considered that the assertion made by Appellants was rejected in the trial of the prior instance, so that there is no illegality with the judgment in prior instance as per the asserted opinion. The gist of the argument cannot be accepted.

Regarding Reason No. 2.1 for the final appeal according to Appellants' attorney, ●●●●, Reason No. 5 for the final appeal according to Appellants' attorneys, ●●●●, ●●●●, and ●●●●, and Reason No. 4 for the final appeal according to Appellants' attorneys, ●●●●, ●●●●, ●●●●, ●●●●, and ●●●●.

In the case where the confusion of goods, as stipulated in Article 1, paragraph (1), item (i) of the Unfair Competition Prevention Act, is acknowledged as a fact, it should be said that there is a risk of harming business interests, unless there are special circumstances, and the judgment of the court of prior instance, whose purport is the same as the above, can be approved as justifiable, and the finding and judgment of the

court of prior instance, in which it was acknowledged that there are no such special circumstances in the present case, can be approved as justifiable in light of the evidence listed in the judgment in prior instance. The gist of the argument is merely one which, put plainly, attacks the fact finding which belongs to the exclusive right of the court of prior instance, or criticizes the judgment in prior instance from a unique perspective, and cannot be accepted.

Regarding Reason No. 6 for the final appeal according to Appellants' attorneys, ●●●●, ●●●●, and ●●●●.

The substance of a trademark right is to grant the exclusive use of the registered trademark for designated goods, and the power to exclusively use marks that are similar to the registered trademark for the designated goods is not included. A holder of a trademark right is only allowed to demand against a person, who uses a similar mark as described above, that the use of the mark be prohibited on the grounds of trademark right infringement (refer to Article 25, Article 36, and Article 37 of the Trademark Act). Accordingly, it should be interpreted that the use by Appellants of the Mark, which is similar to Registered Trademark, does not fall under the "act which is acknowledged as exercising of a right pursuant to the Trademark Act" according to Article 6 of the Unfair Competition Prevention Act. As such, there is no illegality with the judgment in prior instance, whose purport is the same as the above. The gist of the argument is merely one which, put plainly, criticizes the judgment in prior instance from a unique perspective, and cannot be accepted.

Other reasons for the final appeal according to Appellants' attorney, ●●●●, other reasons for the final appeal according to Appellants' attorneys, ●●●●, ●●●●, and ●●●●, and other reasons for the final appeal according to ●●●●, ●●●●, ●●●●, ●●●●, and ●●●●.

In light of the evidence listed in the judgment in prior instance, the finding and judgment of the court of prior instance pertaining to the points made in the asserted opinion can be approved as justifiable, and there is no illegality in the process, as per the asserted opinion. The gist of the argument is merely one which, put plainly, attacks the determination of rejection or adoption of evidence and the fact finding, which belong to the exclusive right of the court of prior instance, or criticizes the judgment in prior instance based on incorrect interpretation of the same, and cannot be accepted in either case.

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, Third Petty Bench

Presiding judge: TAMAKI Shoichi

Judge: YOKOI Daizo

Judge: ITO Masami

Judge: TERADA Jiro