

judgedate

October 7, 1983

caseid

1982 (O) 658

casename

Case of seeking injunction against trade name use

casetitle

Judgment regarding the basis for determining whether or not an indication of business constitutes an "indication of business that is similar" as stipulated in Article 1, paragraph (1), item (ii) of the Unfair Competition Prevention Act.

summary_judge

1. It is reasonable to make the determination on whether or not a certain indication of business constitutes an indication of business that is similar to another person's indication of business, as stipulated in Article 1, paragraph (1), item (ii) of the Unfair Competition Prevention Act, based on whether or not, under the actual conditions of transaction, there is a risk that traders or customers would recognize, from the impression, memory, or association or the like based on the appearance, pronunciation, or concept of the two indications, that the two indications are similar in their entirety.
2. The "act of creating confusion", as stipulated in Article 1, paragraph (1), item (ii) of the Unfair Competition Prevention Act, also includes an act, by a user of an indication of business that is identical or similar to another person's well-known indication of business, which is misleading as to the user being the same agent of business as said other person, as well as an act which is misleading as to the two persons being closely related in business, for example as a so-called parent-subsidiary relationship or as affiliated companies.

court second

Tokyo High Court, Judgment of March 25, 1982

references

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

Main text

The final appeal shall be dismissed.

Appellant shall bear the cost of the final appeal.

Reasons

- I. Regarding Reason No. 2.2 for the final appeal according to Appellant's attorney,
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Upon determining whether or not a certain indication of business is similar to another person's indication of business as stipulated in Article 1, paragraph (1), item (ii) of the Unfair Competition Prevention Act, it is reasonable to make the determination based on whether or not, under the actual conditions of transaction, that there is a risk that traders and customers would recognize, from the impression, memory, or association or the like based on the appearance, pronunciation, or concept of the two indications, that the two indications are similar in their entirety.

The fact situation that was lawfully confirmed in the trial of the prior instance is as follows.

1. Appellee is a corporation which was established and registered on November 30, 1966 as a subsidiary of Manpower, Inc. in Milwaukee, USA, which is the founder of a paperwork contracting business and the largest corporation in the world in this field of business. On October 15, 1971, Appellee moved its main office from its address at ab-c-d Chuo-ku, Tokyo, where it had been located since its establishment, to the place of record. Since its establishment, Appellee has operated the paperwork contracting business by using its trade name, "マンパワー・ジャパン株式会社" [read as "Manpower Japan Kabushiki Kaisha" in English], and its common name, "マンパワー" [read as "Manpower" in English]. The contracting of paperwork as mentioned above means the processing of contracted paperwork, by sending, as secondees, persons with special skills in various types of work, such as interpreters, translators, English/Japanese typists, stenographer secretaries, telex key punchers, office machine operators, telephone operators, and accounting work staff, according to the customer's demand, or the completion of paperwork such as translation which is brought to Appellee's office.
2. Appellant is a corporation which was established and registered on April 15, 1976. On 30th of the same month, Appellant moved its main office from its address at i Building, ef-g-h Minato-ku, Tokyo, where it had been located since its establishment, to the place of record, and on August 2 of the same year, changed its purpose to include a business relating to the contracting of English/Japanese

typing, international and domestic telex operation, English/Japanese stenography, key punching, and office machine operation, and has operated the same paperwork contracting business as Appellee by using the trade name, "日本ウーマン・パワー株式会社" [read as "Nihon Woman Power Kabushiki Kaisha" in English].

3. By around April 1976, which is when Appellant was established, if not earlier, the name, "マンパワー", which is Appellee's trade name and common name, was widely recognized as an indication for Appellee's business activities in Tokyo, which is where the main office was already located, as well as in Sapporo-shi, Yokohama-shi, Nagoya-shi, Osaka-shi, Kobe-shi, and Fukuoka-shi, where Appellee's branch offices were located, and in the neighboring areas.
4. Appellee has received calls from Appellant's customers who mistakenly thought that Appellee and Appellant are the same business entity, and has received questions and inquiries from Appellee's customers asking questions such as "Has a new division for women been created?" and "Is Appellant a subsidiary of Appellee?".

According to the fact situation described above, while the principal part of Appellee's trade name is the part, "マンパワー", which is the common name and which has become well known, it should be said that the principal part of Appellant's trade name is the part of "ウーマン・パワー", and thus the principal parts of the two trade names are different in the parts of "マン" and "ウーマン". However, considering that, given the extent to which English has spread in today's Japan, it is permissible to say that the English word, "マン" [meaning "man" in English], is known to also mean a "person" and is inclusive of a "ウーマン" [meaning "woman" in English], and that the English word, "パワー", is known to mean physical power as well as a person's ability and intelligence, and that both Appellee and Appellant have their main offices in Tokyo and operate the above contracting business of paperwork processing, in which a person's ability and intelligence are utilized and in which the customer demographic is the same, it should be said that in the customer demographic of Appellant and Appellee, the above "マンパワー" and "ウーマン・パワー" have a risk of being recognized as similar in concept by being suggestive of a person's ability and intelligence. Furthermore, since the part of "ジャパン" [meaning "Japan" in English] in Appellee's trade name and the part of "日本" [meaning "Japan" in English] in Appellant's trade name are the same in concept, it can be said that in the aforementioned customer demographic, there is a risk of Appellee's trade name and its common name, "マンパワー", being recognized as being similar to

Appellant's trade name in their entirety. Based on the above, the finding and judgment of the court of prior instance to the effect that Appellee's trade name and its common name, "マンパワー", are similar to Appellant's trade name can be approved as justifiable. There is no illegality with the judgment in prior instance, as per the asserted opinion, and the gist of the argument cannot be accepted.

II. Regarding Reason No. 1.1 for the final appeal.

It is reasonable to interpret that the "act of creating confusion", as stipulated in Article 1, paragraph (1), item (ii) of the Unfair Competition Prevention Act, also includes an act, by a user of an indication of business that is identical or similar to another person's well-known indication of business, which is misleading as to the user being the same agent of business as said another person, as well as an act which is misleading as to the two persons being closely related in business, for example as a so-called parent-subsidiary relationship or as affiliated companies.

When the above is considered in the present case, the above fact situation shows that Appellant used an indication which is similar to Appellee's well-known indication of business, and engaged in an act which is misleading as to Appellant and Appellee being the same business entity, or an act which is misleading as to the two parties being closely related in business, so that, resultingly, it can be said that Appellant engaged in an act which can create confusion with Appellee's business activities, so that the finding and judgment of the court of the prior instance and whose purport is the same as the above, can be approved as justifiable. The gist of the argument is one which merely criticizes the judgment in prior instance from a unique perspective, and cannot be accepted.

III. Regarding other reasons for the final appeal.

In light of the evidence listed in the judgment in prior instance, the finding and judgment of the court of the prior instance regarding the points made in the asserted opinion can be approved as justifiable, and there is no illegality with the process as per the asserted opinion. The gist of the argument is merely one which eventually attacks the rejection or adoption of evidence and the fact finding which belong to the exclusive right of the court of the prior instance, and cannot be accepted.

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

Procedure.

Supreme Court, Second Petty Bench

Presiding judge: OHASHI Susumu

Judge: KINOSHITA Tadayoshi

Judge: SHIONO Yasuyoshi

Judge: MIYAZAKI Goichi

Judge: MAKI Keiji