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judgedate

1967.04.11

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caseid

1964(O)1203

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reporter

Minshu Vol. 21, No. 3

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casetitle

Judgment regarding whether or not the purpose of unfair competition is required for a claim for an injunction of an act based on Article 1 of the Unfair Competition Prevention Act

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casename

Case claiming prevention of unfair competition, etc.

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caseresult

Judgment of the Third Petty Bench, dismissed

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court_second

Tokyo High Court, Judgment of May 27, 1964

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summary_judge

1. A claim for an injunction of an act based on Article 1 of the Unfair Competition Prevention Act does not require the purpose of unfair competition or unfair purpose in such act.

2. As a claim for an injunction of an act based on Article 1 of the Unfair Competition Prevention Act, a claim for procedure of changing the registration of a certain trade name and other claims referred to in the holding can be made.

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references

Article 1 of the Unfair Competition Prevention Act

Unfair Competition Prevention Act

Article 1 If there is a person who conducts an act that falls under any of the following items, a person whose business interests are likely to be infringed upon due to such act may make a claim for suspension of such act:

- (i) the act of creating confusion with another person's goods by using a name, trade name, trademark, container or packaging for goods, or any other indication that is identical or similar to another person's goods that is well-known in the regions where this Act is enforced, or by selling, distributing, or exporting goods that use the same indication;
- (ii) the act of creating confusion with another person's business facility or activity by using a name, trade name, markings, or any other indication that is identical or similar to another person's business that is well-known in the regions where this Act is enforced;
- (iii) the act of creating misconception concerning the place of origin by using a false identification of the place of origin on goods or in an advertisement thereof, or in trade documents or correspondence in a way that the public can know the content, or by selling, distributing, or exporting goods that use the same indication;
- (iv) the act of using an indication that creates misconception that the goods were produced, manufactured, or processed in a place other than a country where the goods were actually produced, manufactured, or processed, on goods or in an advertisement thereof, or in trade documents or correspondence in a way that the public can know the content, or of selling, distributing, or exporting goods that use the same indication;
- (v) the act of using an indication that creates misconception about the goods' quality, content, or quantity, on goods or in an advertisement thereof, or of selling, distributing, or exporting goods that use the same indication; or
- (vi) the act of making or circulating false allegations that harm the business reputation of another person who is a business competitor.

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maintext

The final appeal is dismissed.

The cost of the final appeal shall be borne by the appellant of final appeal.

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reason

Item I.1 in reasons for final appeal filed by the counsel for the final appeal

The argument of the counsel for the final appeal alleges that the judgment in prior instance is unconstitutional. Substantially, the argument alleges that it should be understood that an injunction of an act based on Article 1 of the Unfair Competition Prevention Act requires the purpose of unfair competition or unfair purpose in such act, and that the judgment in prior instance contains an error in construction of the law. However, this Court also affirms construction of the law in the holding of the judgment in prior instance with regard to this point (see reasons of the judgment in prior instance). The judgment in prior instance does not contain illegality alleged in the argument, and therefore the argument cannot be accepted.

Item I.2 in reasons for final appeal

In the judgment in prior instance, it is held that, as the exercise of a right to claim for an injunction of an act based on Article 1 of the Unfair Competition Prevention Act, a claim for procedure of changing the registration of a certain trade name; or a claim for prohibition of conducting a business with a certain indication in a store, or selling goods that use a certain indication thereon or on their packaging, or for deletion of a certain indication in a store, or on goods or packaging, or disposal of goods or packaging with such indication can be made. This point of view of the court of prior instance is legitimate because the purpose of the same Article cannot be achieved unless the above claims are allowed. The judgment in prior instance does not contain illegality alleged in the argument of the counsel for the final appeal, and therefore the argument cannot be accepted.

Item II in the reasons for final appeal

In the holding of the judgment in prior instance, the finding of the fact of “good faith” pointed out by the argument of the counsel for the final appeal can be affirmed based on evidence accepted in the judgment in prior instance. The argument of the counsel for the final appeal that “good faith” referred to in Article 2, paragraph (1), item (iv) of the same Act should be construed as the meaning of “not having the purpose of unfair competition” is an original view of the counsel for the final appeal and cannot be accepted. The judgment in prior instance does not contain illegality alleged by the argument.

Accordingly, pursuant to Article 401, Article 95, and Article 89 of the Code of Civil

Procedure, the judgment has been rendered as set forth in the main text by the unanimous consent of the justices.

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presiding

Justice YOKOTA Masatoshi

Justice KASHIHARA Goroku

Justice TANAKA Jiro

Justice SHIMOMURA Kazuo

Justice MATSUMOTO Masao
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note_other

(This translation is provisional and subject to revision.)