Judgment rendered on February 28, 1975
1973 (Gyo-Tsu) 82
Indication of parties Omitted

Main text

The final appeal of the present case shall be dismissed.
The costs of the final appeal shall be borne by the appellant.

Reasons

Reasons for the petition for final appeal made by the attorney for the final appeal, MATSUDA Takashi.

It is believed that Article 3, paragraph (1), item (iii) of the Design Act (hereinafter referred to as "Act") provides, as a requirement for registration of a design, that a design shall not be similar to the design listed in item (i) or (ii) of the same paragraph (publicly known design), in which case the point at issue is the similarity in terms of aesthetic impressions, as observed from the standpoint of general consumers, between the designs having identical or similar goods. To the contrary, the registration requirement according to paragraph (2) of the same Article is based on the shape, patterns, or colors, or any combination thereof, as widely known in Japan to constitute an abstract motif that is irrelevant to goods (well-known motif), and the same provision provides that a design shall not be something that can be easily created by those skilled in the art. As such, in paragraph (2) of Article 3, the restriction that the goods must be identical or similar is removed, and the point at issue is based on the well-known motif above and concerns the newness or uniqueness in the conception of the design, as observed from the standpoint of those skilled in the art. Accordingly, the similarity according to item (iii) of paragraph (1) of Article 3 and the easiness to create according to paragraph (2) of the same Article are different in the basis of the respective ideas, and thus it must be said that the judgment of the court of prior instance, based on the interpretation that the meaning of similarity according to item (iii) of paragraph (1) of the same Article is the same as the easiness in creation, to the effect that item (iii) of paragraph (1) of the same Article provides for refusal of registration concerning a design that can be easily created from the design listed in item (i) or (ii) of paragraph (1) of the same Article, is erroneous (Supreme Court Decision of 1970 (Gyo-Tsu) 45; judgment rendered on March 19, 1974, by the Third Petty Bench; refer to Minshu [Notes on Civil Cases], vol. 28, no. 2, page 308).

According to the decisions made in the court of prior instance, (1) the back side of

the Design, which is at issue in the present case, should be ignored because of its function, and (2) the entire shape of the Design is common, and (3) upon comparison between the Design and the Cited Design, whether or not the surface of the main body is divided into eight equal parts or six equal parts, whether or not the width of the brim (or flange) is uniform, whether or not there is a ribbon or a binding part thereof, and whether or not there is a black design on the surface of the main body are minor differences, none of which is enough to attract observers' eyes in the entirety. As such, the above judgment can be approved in light of the constituent parts of the two designs. Next, the combination of colors as pointed out as a difference between the two designs in the court of prior instance (black and yellow in the Design, dark red and orange in the Cited Design) is, in short, merely a combination of two colors even by taking into consideration the difference in lightness and hue, which were pointed out in the court of prior instance. Furthermore, as determined in the court of prior instance, the bicolor combination of the Design is very common, and thus it is difficult to say that the difference in the color combination of the two designs is necessarily noticeable. In that case, it is unavoidable to consider that the two designs are similar based on the comparison of the Design and the Cited Design upon observation of the two designs in the entirety, and it is reasonable to interpret that the Design falls under Article 3, paragraph (1), item (iii) of the Act in terms of its relationship with the Cited Design, which is a publicly known design.

Given the foregoing, the judgment of the court of prior instance to maintain the claim that the Design cannot be registered due to its applicability to item (iii) of paragraph (1) of the same Article is justifiable in its conclusion in spite of lacking the proper process in reaching the decision.

Consequently, the arguments made by the appellant cannot be accepted.

Therefore, the court unanimously renders the judgment as per the main text pursuant to Article 7 of the Administrative Case Litigation Act, and Articles 401, 95, 89, and 93 of the Code of Civil Procedure.

Supreme Court, Second Petty Bench

Presiding Judge: YOSHIDA Yutaka
Judge: OGAWA Nobuo
Judge: OTSUKA Kiichiro