

## Latest Court Decisions

**2011:**

**[February]**

### ● KINPAK Case (Unfair Competition Case)

**Tokyo District Court 2011.2.25. H21(Wa)31686**

The Unfair Competition Prevention Law in Japan prohibits imitations of the configuration of the new products within three years since they were sold in Japan.

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Article 2-1-3 The term "unfair competition" as used in this Act means any of the following:

- acts of assigning, leasing, displaying for the purpose of assignment or leasing, exporting or importing goods which imitate the configuration (excluding configuration that is indispensable for ensuring the function of said goods) of another person's goods;

(Exclusion from application, etc.)

Article 19 The provisions of Articles 3 to 15, Article 21 ... shall not apply to the acts prescribed respectively in the following items for the classification of unfair competition listed therein:

(v) unfair competition listed in Article 2-1-3 any of the following acts:

- a: the act of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods that imitate the configuration of goods for which three years have elapsed from the date they were first sold in Japan;

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This is the case where the imitation of the configuration has been denied by the Tokyo District Court.

The new products were the cosmetic facial masks in gold named "KINPAK" which means "Golden Mask".

You will see that the Defendant's mask (right lower) was quite similar to the Plaintiff's mask (right upper).

Despite that, the Court dismissed the Plaintiff's petition with the following reasons.

(1) The two masks were square shapes like faces and had the holes for noses in common.

However, these configurations in common were indispensable functions for facial masks.

(2) The gold leaves were used for the two masks.

However, the gold leaves are mere materials of the masks and the gold leaves were used for facial masks in the past.

1 <原告商品>



2 <被告商品>



(3) The gold leaves were on the mounting papers and were covered by thin papers.

However, these mounting papers and the thin papers were indispensable to protect the functions of the gold leaf facial masks.

(4) The two masks had characteristic colors, glazes and textures in common.

However, these characteristic points were due to the materials of the gold leaves.

We believe that this would be the good case to think about what are the prohibited imitations of the new products.