

Latest Court Decisions

2014:

[April]

- **Kitchen Utensil Unfair Competition Case** (Damage Suit)

Tokyo District Court 2014.4.17 H25(Wa)18665

[SUMMARY/INTRODUCTION]

In Japan, there are many **100Yen flat-rate price shops** where we can buy all items at 100 Yen (=approx US\$1.00). This is the case that while the Plaintiff sold kitchen utensils such as half-boiled egg makers, lemon juicers, vegetable brushes, garlic crushers and omelet makers at 300 Yen – 500 Yen, the Defendant DAISO INDUSTRIES CO., LTD., the largest 100 Yen flat-rate price shops in Japan, sold similar kitchen utensils at 100 Yen/item.

The Plaintiff filed the damage suit demanding the Defendant to pay 47,520,000 Yen as the damages under the Unfair Competition Prevention Law. The issues in dispute were the following 2 points.

- 1) Whether or not the sales of the Defendant's goods were considered as the unfair competitions under Article 2-1-1 of the Law.
- 2) Whether or not the Defendant's goods were regarded imitations of the configurations of the Plaintiff's goods under Article 2-1-3 of the Law.

[CASE]

The Unfair Competition Prevention Law provides the following actions as "Unfair Competition".

Article 2 (1) The term "**unfair competition**" as used in this Act means any of the following:

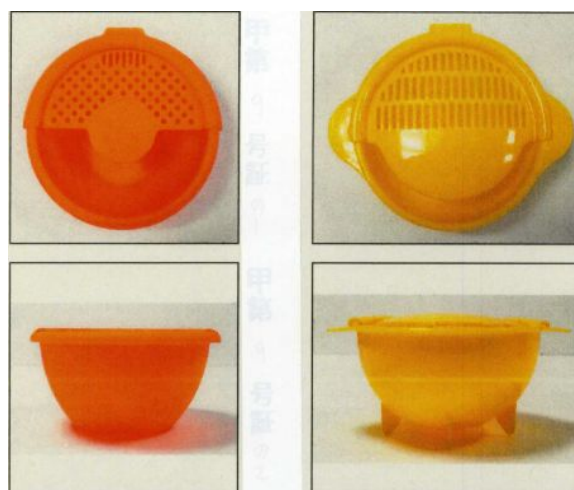
(i) the act of **creating confusion** with another persons' goods or business by using an indication of goods or business (meaning a name, trade name, trade mark, mark, container or packaging for goods...) that is identical or similar to an indication of goods or business that is **well known** among consumers as that of another person...

(iii) the act of assigning, leasing, displaying for the purpose of assignment or leasing, exporting or importing goods that **imitating the configuration** of another person's goods (excluding configuration that is indispensable for ensuring the function of said goods).

N.B. Article 2-1-3 is **not applied** to the imitation of configuration of goods for which **three years have elapsed since the date they were first sold** in Japan (Article 19-1-5-a).

The photos are the half-boiled egg makers, the left is the Plaintiff's goods and the right is the Defendant's.

As the result, the court dismissed the Plaintiff's petitions. First of all, the court denied the fact that the Plaintiff's goods were well-known because only two months passed since the first sales of the Plaintiff's goods. In addition, the submitted evidence such as copies of magazines showing the goods was issued after the time when the Plaintiff alleged that the Plaintiff's goods became well-known.



Furthermore, the court admitted that there were some similarities between the both parties' goods. However, the court said that such similar configurations were adopted to fulfill the functions required for these food processors, for instance, to make half-boiled eggs. In addition, the consumers could find other dissimilar points in the both parties' configurations.

Therefore, the Defendant's goods were not similar to the Plaintiff's goods and the Defendant's goods did not imitate the configurations of the Plaintiff's goods.