

## Latest Court Decisions

**2018:**

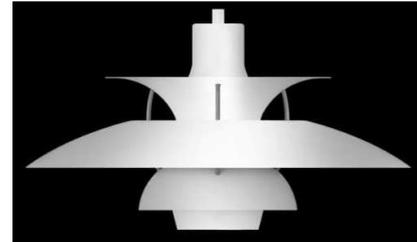
[December]

• **Lamp Shade Three-Dimensional Trademark Case (Infringement Suit)**

**Tokyo District Court 2018.12.27 H29(Wa)22543**

**[SUMMARY / INTRODUCTION]**

A Danish corporation, Louis Poulsen A/S (the Plaintiff), registered the lamp shade shape as a three-dimensional trademark (right upper) for lamp shades in Class 11.



A Japanese interior shop "K.K. R&M Japan" (the Defendant) imported from China and sold 7 types of pendant lights (right lower), 449 items in total, in Japan saying them as "Poul Henningsen Reproduction products".



The Plaintiff filed the infringement suit before the Tokyo District Court demanding from the Defendant suspension of distribution of the goods and payment of 18,374,400 Yen as the damages.

What was the Court decision ?

**[Court Decision]**

The points at issue of the case were as follows.

- (1) Similarity between the Plaintiff's registered three-dimensional trademark and the Defendant's pendant light shapes ?
- (2) Similarity between the specified goods "lamp shades" of the Plaintiff's trademark and the Defendant's pendant lights as lighting equipment ?
- (3) Was the Plaintiff's trademark a kind of common shape of usual lamp shades or did it acquire distinctiveness by use ?
- (4) Amount of damages ?

As to the similarity as the trademarks, the Court decided two shapes were almost identical as the Defendant itself called the Defendant's goods as "reproduction products" despite of some slight differences.

As to the similarity of the goods, the Court also decided that they were similar since uses of the lamp shades and the lighting equipment were identical and they were sold at same lighting stores.

The Tokyo District Court also admitted as the IP High Court decision in July, 2018 that the Plaintiff's lamp shade was well-known among traders and consumers of lighting equipment in Japan. As to its detailed reasons, please refer to our report of the court decisions in July, 2018 at our web-site.

Finally, the Court decided 4,412,586 Yen as the damages to be paid to the Plaintiff while the Plaintiff firstly insisted the damages as 18,374,400 Yen. The decided damages were correspondent to the profit of the Defendant gained by the sale of the Defendant's goods (Article 38-2 of the Trademark Law).

The reproduction products of the Plaintiff's goods were sold in China at approx. 6,668 Yen/item (=RMB 389.5) and its usual transportation fee was approx. 3,766 Yen (=RMB 220). The Court decided that the total purchase price per item was 12,000 Yen. The Defendant imported 449 lamps from China at 5,388,000 Yen (12,000 Yen X 449 items) that was to be deducted from the total sales amounts, 9,300,586 Yen.

Thus, the profit of the Defendant was 3,912,586 Yen

The Defendant insisted that the personnel expenses, packing costs, internet costs and advertisement costs should also be deducted from the sales amounts. However, the Court dismissed it because only the expense directly required for the sales of the infringing goods should be deducted.

In addition, the Court admitted the payment for the attorney fee of 500,000 Yen which was almost equivalent to 10% of the damages admitted.

As to the burden of the litigation expense, the Court ordered the parties to bear the cost by 50%-50% since almost 50% of the Plaintiff's demands was admitted.