

**Protection of “Shop Exterior”
under the Unfair Competition Prevention Law
<Komeda’s Coffee Shop Case>**

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Abstract

This is a case where a Japanese company (“Komeda”) widely operating popular coffee shops petitioned for a provisional injunction against use of the exterior appearance of the other party’s coffee shop (“Masaki”) under the Unfair Competition Prevention Law. The court accepted Komeda’s petition, since use of the exterior appearance of Masaki’s coffee shop was considered likely to cause misrecognition and confusion in connection with Komeda’s business due to the overall similarity of the exterior appearance of Masaki’s coffee shop to that of Komeda’s coffee shops.

Tokyo District Case No.: 2015 (yo) 22042,
Case of a petition for an order for provisional injunction
Decision Date: December 19, 2016

Exterior appearance of
Masaki’s coffee shop



Exterior appearance of
Komeda’s coffee shop



(Photos from <http://www.zakzak.co.jp/society/domestic/news/20161228/dms1612281130010-n1.htm>)



Court Decision

1. Whether or not the exterior appearance of Komeda's coffee shop ("Komeda's shop exterior") falls under the "indication of goods or business" as provided for in the Unfair Competition Prevention Law (UCP Law)"

1) The reasoning of the Court was as follows:

The shop exterior itself is not usually considered for the purpose of indicating a source of business, but is sometimes intended for the purpose of embodying the shop image of a business entity. Further, it is considered that the entire shop exterior has an acquired ability to indicate a specific business entity and correspond to the "indication of goods or business" prescribed in Article 2(1)(i) and (ii) of the UCP Law, when (a) the shop exterior is objectively different from the shop exteriors of the same type and has distinct characteristics, and (b) in view of the length of time of the continuous and exclusive use of the exterior by a specific entity or the circumstances of advertisement of the business including the exterior, it is deemed that the shop exterior is widely recognized by consumers as indicating a source of a specific business entity.

2) From this standpoint, the Court determined whether or not the Komeda's shop exterior falls under the "indication of goods or business", as follows:

--- It was deemed that the shop image of Komada's standard suburban-type shops had been determined as embodying a comfortable space where customers can relax as in living rooms at home. The thus-determined exterior having a combination of characteristics of a gable roof, a protruding bay window from the top to the bottom below the gable roof, brick walls, etc., was naturally deemed to be characteristic. The exterior further combined with the characteristic in-shop structure and interior was deemed to be more characteristic. Thus, when compared to the exteriors of other shops of the same suburban-type, the exterior having these characteristics was deemed to have distinct characteristics objectively different from the exteriors of other shops of the same suburban-type.

--- Thus, since the exterior appearance of Komeda's coffee shop had distinct characteristics objectively different from the exterior appearances of other shops of the same suburban-type, it was deemed that the exterior appearance of Komeda's coffee shop falls under the "indication of goods or business" prescribed in Article 2(1)(i) and (ii) of the UCP Law.

2. The Court then found that: (a) in August 2014 when Masaki's coffee shop was established, the number of Komeda's coffee shops had increased to approximately 600 in Japan, and Komeda's shop exterior had become "widely known among consumers" as prescribed in Article 2(1)(i) of the UCP Law in the relevant area, (b) it cannot be denied that Komeda's shop exterior and Masaki's shop exterior are similar to each other as a whole, even in consideration of the difference between the shops in the exterior and interior, such as the indication of shop names ("Komeda's Coffee" and "Masaki's Coffee"), and (c) in view of the large number of actual inquiries regarding the relationship between Masaki's shop and Komeda's shops, even in consideration of differences in shop names, etc., use of Masaki's shop exterior may cause a misrecognition or misunderstanding that there is a



close business relationship (e.g., capital relationship, group company relationship, or alliance relationship) with Komeda.

3. In conclusion, the Court held that use of Masaki's shop exterior was an unfair competition act as prescribed in Article 2(1)(i) of the UCP Law and may infringe on the business interests of Komeda, and thus Komeda had the right to demand an injunction against use of Masaki's shop exterior under Article 3(1) of the UCP Law.

Comments

- This is the first case where the specific exterior of a shop was accepted as an "indication of goods or business" prescribed in the UCP Law. The key point regarding the protection of the shop exterior under the UCP Law is whether the shop exterior can be recognized among consumers as an "indication of goods or business". The shop exterior, in particular, in a chain of stores, usually depends upon the location site thereof. In this case, however, Komeda made the image of its standard-type shops clear, and which were located close to Masaki's shop, and listed the characteristics of the exterior of the standard-type shops based on the image. The exterior with the characteristics, as a whole, was accepted as an "indication of goods or business", since it had distinct characteristics objectively different from the exteriors of other shops of the same type.
- It is considered that the above strategy, namely to make the image of a shop(s) clear and list the characteristic of the shop exterior based on the image, should be noted for protection of the shop exterior under the UCP Law.

---End---

※ Reference

The Unfair Competition Prevention Law (tentative English translation)

Article 2 (Definitions)

(1) The term "unfair competition" as used in this Law means any of the following:

(i) acts of causing confusion with another person's goods or business by using an **indication of goods or business** (which means a name, trade name, trademark, mark, or container or package of goods used in relation to a person's business, or any other indication of a person's goods or business; the same shall apply hereinafter) that is identical or similar to said person's **indication of goods or business** that is widely-known among consumers or other purchasers, or by assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line the goods using such an indication;

(ii) acts of using as one's own an **indication of goods or business** that is identical or similar to another person's well-known **indication of goods or business**, or the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line the goods using such an indication;

Article 3 (Right to seek an injunction)

(1) A person whose business interests have been infringed or are likely to be infringed by unfair competition may seek an injunction suspending or preventing the infringement against the person that infringed or is likely to infringe such business interests.