

Carabiner case
(Scope of the article of a design right)
Tokyo High Court
H17(Ne) No.10079(October 31,2005)

FACTS

The appellant, X, owns a design right. The article according to the right stated in the application was “carabiner”, while it was stated in the column “Explanation of Article” that “the article according to the right of this application can be used not only as a climbing gear and a hanging ring but also as an accessory such as a key ring or a key chain”.

The appellee, Y, sold heart-shaped key chains.

X brought an action for infringement against Y.

ISSUE

Does a statement in the column of “Explanation of Article” in an application affect the scope of a design right?

HOLDING

The article according to a design right is decided merely by the statement in the column of “Article according to the Right” in an application. The column “Explanation of Article” is available for providing a supplementary explanation to understand more about the article, such as the purpose of use, etc., and does not affect the scope of the article according to the right.

The article according to the design right of X is “carabiner”, which is climbing gear. The statement in the column “Explanation of Article” indicates no more than that the carabiner can also be used as an accessory.

In this case, X’s carabiner and Y’s article (accessory) are not similar and X’s design right does include accessories.

Therefore, even if the configuration of Y’s article were similar to that of X’s design right, the sale of accessories by Y does not infringe X’s right.