

Cosmetic Puff Case
Osaka District Court
Case H16 (Wa) 6262, Judgment on December 15, 2005 (H17)

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FACTS

The plaintiff was a holder of the design right for a part of a cosmetic puff. The defendant was manufacturing and selling silicon brushes. The plaintiff filed a lawsuit in Osaka District Court, alleging that the defendant's products constitute infringement of the design right. The District Court allowed injunctive relief and ordered the defendant to pay damages.

ISSUE

Whether the article of the defendant' product, a silicon brush for cleansing and massaging faces, is similar to that of the registered design (cosmetic puff).

HOLDING

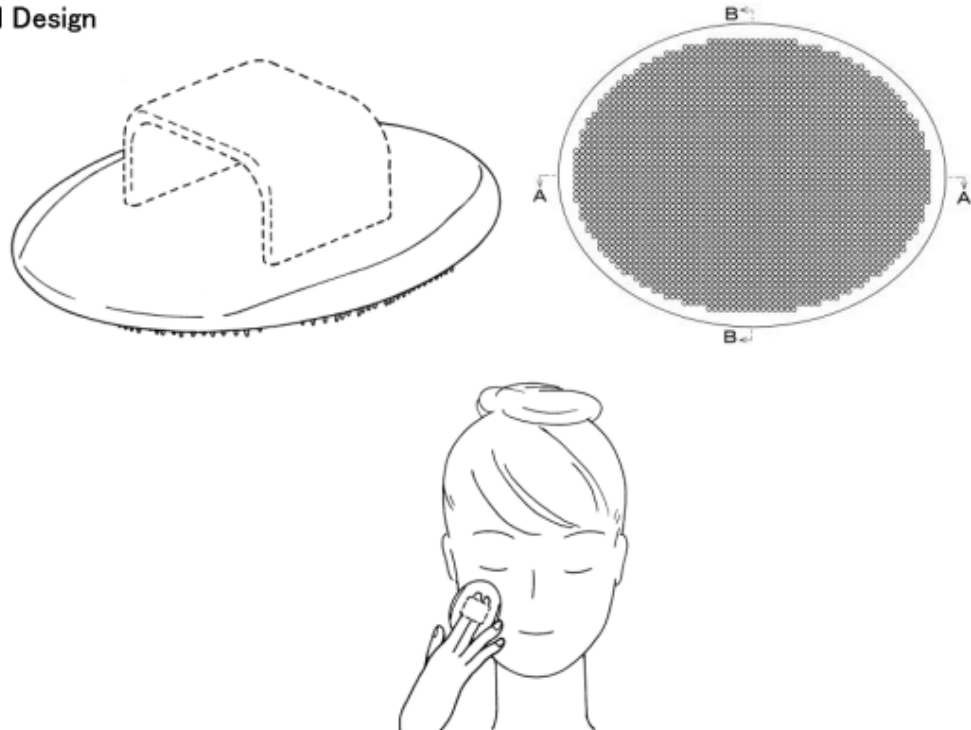
In order to regard that a suspect product is similar (Article 23 of the Design Law) to a registered design, it is necessary for an article of the product to be the same or similar to that of the registered design.

To judge the similarity of designs, it should be considered on the basis of general consumer's sense whether there is a possibility of confusion being caused in both designs, due to their common aesthetic impressions. Therefore, on the basis of general consumer's sense, the similarity of the articles also should be considered from the perspective of whether there is a possibility of confusion being caused between the two articles as a result of understandings that both articles have identical or common functions, or applications, of the article .

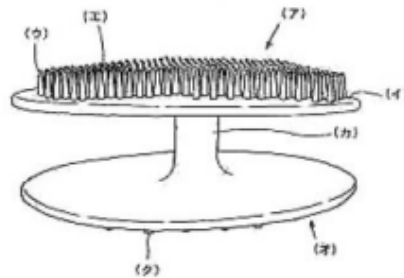
In this case, according to the evidence on the internet, which is related to the product itself or the cleansing method, it can be recognized that the "Puff" has functions not only for putting cosmetic on faces but also for cleansing faces.

As a result, the articles of the present registered design and the suspect product are similar to each other, since they have common functions or applications.

Registered Design



Suspect Product



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Original document (Japanese):

http://www.courts.go.jp/app/files/hanrei_jp/232/009232_hanrei.pdf

English translation:

N/A