Slot Machine Case

(Criminal Infringement of a Trademark)

(Trademark Law Articles 37(2) (before 1991) and 78 (before 1993)

Supreme Court

Heisei 8 (a) No. 342 (February 24, 2000)

FACTS

Defendant-Appellants ("Appellants") are a president and employees of a company that manufactures and sells certain slot machines.

Sharp Corporation, the Plaintiff-Appellee, accused the Appellants of trademark infringement under criminal law provisions of the Trademark Law, specifically "Infringement of a Trademark Right" of Article 78 of the Trademark law (before revision according to Act No. 26 of 1993), alleging that the Appellant possessed about 10,000 electronic components bearing the trademark "SHARP", which is a registered trademark of Sharp Corporation, for the designated goods "electronic machines, apparatus and their parts and so on", and sold 61 of the slot machines with the electronic components mounted on the main boards of the slot machines.

The Osaka High Court found the Appellants guilty. The Appellants appealed the case to the Supreme Court, asserting errors of law and unjust assessment.

ISSUE

Does unauthorized use of a trademark used on parts constitute trademark infringement when the parts are incorporated into the finished product?

HOLDING AND REASONING

The Osaka High Court's ruling is upheld; appeal dismissed.

Appellants obtained the above-described electronic components, which are central processing units ("the CPUs"), from others so as to sell the electronic

components for use in the slot machines. The electronic components already bore the subject trademark without the consent of Sharp Corporation when the defendants obtained the electronic components.

Appellants, who knew The trademark was being used without the consent of Sharp Corporation, soldered the electronic components and other electronic components onto the main boards, covered the main boards individually with a transparent or translucent plastic case, and stored the main boards separately from the slot machines.

The CPUs maintained their original exterior and form even after being incorporated into the main boards and the trademark used on the subject CPUs was visually recognizable through the plastic cases.

The slot machines were sold to pachinko parlors through middlemen. The slot machines themselves and the main boards were separately delivered, and assembled in the pachinko parlors by, for example, inserting the main boards in the top slots in the bodies of the slot machines, which are then installed in the pachinko parlors.

Such main boards were also sold as repair parts separately from the slot machines, and the pachinko parlors could purchase them as stock items. Thus, for example, the main board of one of the slot machines malfunctioned and was replaced with a new main board in a pachinko parlor. Although the CPUs mounted on the main boards and the trademark used on the CPUs were not visually recognizable from the outside, it was possible for the CPUs and the trademark on them to be seen by the middlemen and persons related to the pachinko parlors in the distribution of the slot machines as described above.

Under the facts described above, the trademark used on the parts remained identifiable even after the parts were incorporated into the finished product. Therefore, the judgment of the lower court was reasonable, since the use of the trademark constitutes trademark infringement.