







TRADEMARK, DESIGN & UNFAIR COMPETITION

# Korean Supreme Court Affirms that Shop Decorations and Trade Dress are Protected Under Unfair Competition Law

On September 21, 2016, the Korean Supreme Court (Case No. 2016Da229058) affirmed without opinion an earlier High Court decision (Case No. 2015Na2044777) that had held that a bakery shop's general appearance (including the logo, outdoor signage and indoor layout) and other trade dress elements are protected under the Unfair Competition Prevention and Trade Secrets Act ("UCPA"). As Korea lacks express trade dress intellectual property rights, this case is noteworthy as the first time the Supreme Court has specifically recognized the protection of such rights in shop interior and outdoor decorations under Korean law, and as a test case for interpretation of the new "catch-all" provision of the UCPA.

This case was originally brought by "Seoul Lovers" (a DBA of Slowfood-Korea, Inc.), a premium bakery shop known for serving freshly baked sweet red bean pastries, against another competing bakery shop founded by a former employee of Seoul Lovers and his business partner. The defendant bakery clearly imitated Seoul Lovers' appearance and design, as the following comparison shows:

	Seoul Lovers	Defendant bakery
Logo		
Outdoor Signage		
Indoor Layout & Design		

However, because Korea does not specifically provide for trade dress protection under its trademark laws, Seoul Lovers brought an action under Article 2(1)(x) of the UCPA (commonly known as the "catch-all" provision of the UCPA), claiming that by copying Seoul Lovers' trade dress, the defendants were unfairly profiting from the infringement of Seoul Lovers' intellectual property, which it had developed at significant effort and expense.

The Seoul High Court had agreed that the appearance and design elements claimed by Seoul Lovers as its trade dress were the result of considerable effort and investment by Seoul Lovers to distinguish itself from other bakeries, and that the defendants were engaged in unfair and improper business practices by free riding on Seoul Lovers' goodwill, thus meeting the requirements of Article 2(1)(x) of the UCPA. By affirming this decision, the Supreme Court has clearly signaled that the High Court's interpretation was correct, and that trade dress in shop decorations can be protected in Korea under the UCPA.

Kim & Chang successfully represented Seoul Lovers at the district court, High Court, and Supreme Court.

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