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# Japan: Jam Seller Rebuts Presumption of Similarity between Goods and Retail Sale of Goods

By [Robin N. Baydurcan](#)

*[No official case caption]*

In a 2018 decision (H29 (Wa) 123, February 14, 2018), the Tokyo District Court denied a trademark infringement claim, finding that “retail services or wholesale services for processed food” are not similar to the goods “plum/blueberry jam.” The retail services were registered in connection with the mark JOYFARM in Katakana,[More](#)

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In a 2018 decision (H29 (Wa) 123, February 14, 2018), the Tokyo District Court denied a trademark infringement claim, finding that “retail services or wholesale services for processed food” are not similar to the goods “plum/blueberry jam.” The retail services were registered in connection with the mark JOYFARM in Katakana, owned by an individual plaintiff who sold blueberry jam. The defendant sold blueberry jam and other fruit-based food products under its corporate name Joyfarm Odawara (Odawara is a city in Japan). The plaintiff claimed trademark infringement and sought an injunction against the use of the label below:



The District Court focused only on the similarity of the parties' goods/services, without assessing the similarity between the marks as used in commerce. While the plaintiff argued that fruit-based jams are categorized as "processed vegetables and fruits" in Class 29 and are presumed to be similar to retail and wholesale services featuring processed food in Class 35, the Court examined marketplace conditions and found that it is not common for businesses who manufacture jams to also provide retail or wholesale services for processed food. The Court did, however, recognize that fruit-based jams and processed fruits are related. The infringement claim was dismissed.

Trademark coverage for retail and wholesale services in Class 35 was first introduced in Japan in 2007. The Japanese Trademark Office has since considered retail/wholesale services for particular goods to be similar to those goods for trademark examination purposes. This is the first court case after the introduction of retail/wholesale services where the defendant successfully rebutted the presumption of similarity under the Japan Patent Office ("JPO") Trademark Examination Guidelines.

It is unclear whether the additional text and design elements of the defendant's label may have influenced the court's decision to find non-infringement here. Indeed, perhaps it would have been a rather simple finding of non-infringement if the Court had compared the parties' marks as a whole, instead of focusing on the parties' goods/services. It is rather interesting that the Court found it uncommon for jam manufacturers to also sell processed foods, as this seems to defy commercial realities. In any event, this case highlights the potential for differences to arise between Trademark Examination Guidelines at the JPO versus infringement actions before the courts.

## Primary Contacts

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