

# South Korea: Shop Decorations and Trade Dress Protected Under Competition Law

By Amanda B. Agati

*Slowfood-Korea, Inc. v. Gil-Soo Kim and Hyung-Yak Lee*, Supreme Court, 2016Da229058, Sept. 21, 2016 (S. Kor.)

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The Korean Supreme Court recently affirmed a High Court's decision holding that a shop's appearance, including the logo, outdoor signage, indoor layout, and other decorative elements are protected trade dress under the Unfair Competition Prevention and Trade Secrets Act ("UCPA"). While three-dimensional marks are registrable under the Korean Trademark Act, the Act does not specifically provide for trade dress rights. Therefore, this Supreme Court decision underscores the importance of the UCPA as an important recourse for business owners seeking to protect such unregistrable rights.

In a 2014 decision (NUPL Co., Ltd. v. Mcostar Co., Ltd., Seoul Central District Court [Dist. Ct.], 2014Ga-Hap524716, Nov. 27, 2014 (S. Kor.)), the Seoul Central District Court first recognized that a shop's overall appearance and decorative elements can be protected as trade dress under the UCPA. This was the first Korean court decision to interpret the "catch-all" provision of the UCPA, and to apply the provision to afford protection to a store's "look and feel." See our March 2015 discussion at Newsletter Article. The Supreme Court's recognition of trade dress protection in shop decorations under Korean law establishes an important precedent.

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The catch-all provision of the UCPA, which entered into force on January 31, 2014, states that “a party shall not interfere with another person’s right to profit by appropriating for one’s own business use, without authorization, anything which the other person produced through considerable effort or investment in a manner that contravenes fair commercial trade practice or competition order.” Since its inception, this broad provision has become increasingly helpful in protecting brand owners from general acts of unfair competition not otherwise prohibited in the UCPA.

In the instant case, Seoul Lovers, a premium bake shop, sued a competing bakery founded by a former employee of Seoul Lovers, which imitated Seoul Lovers’ overall design, as pictured below:

Seoul Lovers argued that the defendants unfairly profited from the infringement of Seoul Lovers’ intellectual property, which it had developed through significant effort and expense. In the decision below, the High Court ruled that the design elements were the result of Seoul Lovers’ considerable effort and investment to distinguish itself from other bakeries, and that the defendants engaged in unfair and improper business practices by free riding on Seoul Lovers’ goodwill. The High Court also awarded substantial damages to Seoul Lovers, which is rare due to the difficulty of calculating actual damages in trade dress cases.

In affirming this ruling, the Korean Supreme Court has expressly recognized that a brand’s substantial effort and investment in designing the look and feel of retail stores can be protected under the UCPA, which is welcome news to brands operating such stores in Korea.

## **Primary Contacts**

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