

## Supplementary Materials for Video 16 "The Difficulty of Similarity"

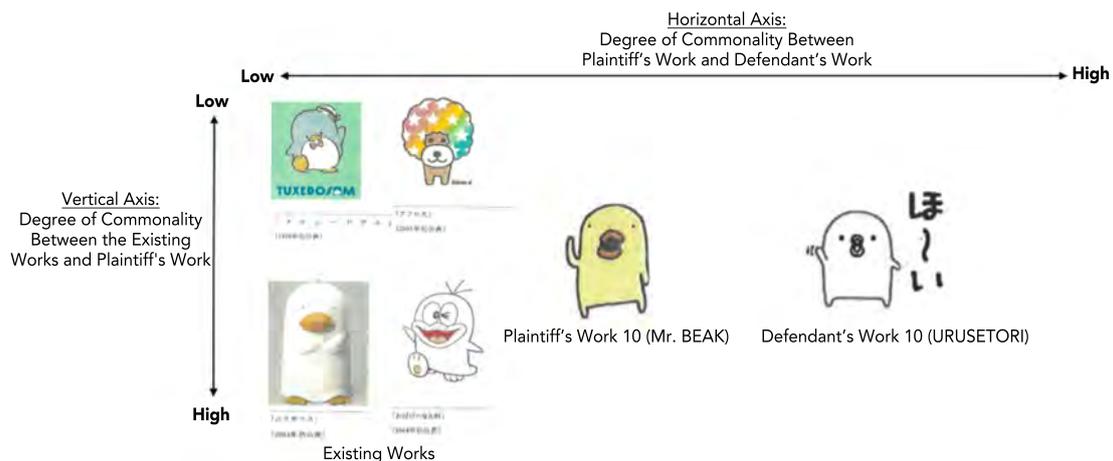
# Cases on Similarity Issues

In Video 16, we used a novel as an example to explain the similarities of copyrighted works. However, the common principles apply to other types of copyrighted works as well.

As explained in Video 16, in court cases, similarity is not determined by simply comparing the works in question side by side. Understanding that both the "vertical axis" and "horizontal axis" perspectives are necessary may help you remember this concept more easily.

The horizontal axis involves comparing the works in question with each other. On the other hand, the vertical axis involves considering what works have existed in the past and comparing the plaintiff's work with existing works to determine where the originality of the plaintiff's work, which is the subject of the copyright claim, lies. The court does not merely compare the works in question but also compares them with existing works before determining whether they constitute copyright infringement.

In the URUSETORI case (Tokyo District Court, October 14, 2020, Reiwa 1 (Wa) 26106), the similarity between the plaintiff's work "Mr. BEAK" and the defendant's work "URUSETORI" was at issue. The defendant submitted evidence regarding various existing characters, and the court considered these as well when assessing the originality of the plaintiff's work, ultimately denying any similarity between the two works.



Source: Judgment Appendix

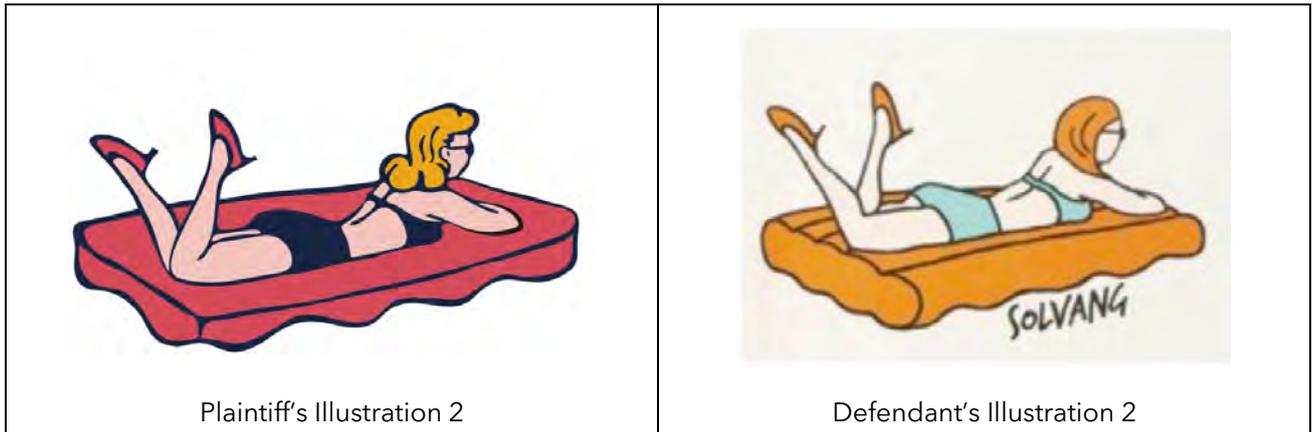
We will briefly introduce the key points of court judgments that assessed similarities over illustrations and photographs, using the horizontal axis only to help you understand the issues through cases (in cases involving multiple works, only parts of the works are highlighted).

## Illustrations

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### T-shirt Illustration Case: Tokyo District Court, September 29, 2023, Reiwa 3(Wa) 10991 → Infringement.

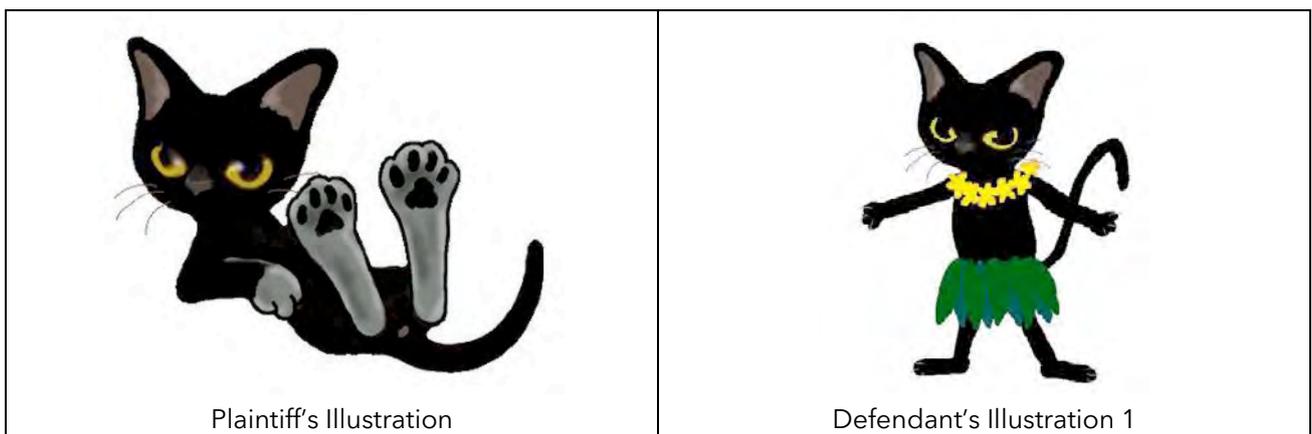
The defendant sold T-shirts featuring illustrations similar to those depicted on T-shirts sold by the plaintiff.



*Source: Judgment Appendix*

### Fula Neko Case: Osaka District Court, September 10, 2015, Hanji No. 2320, p. 124 → Infringement

This case involves the defendant creating an illustration by combining a black cat illustration found online with hula dance attire. The plaintiff, an illustrator, filed a lawsuit claiming copyright infringement.



*Source: Judgment Appendix*

**Sleeping Cat Illustration Case: Osaka District Court, April 18, 2019, Heisei 28 (Wa) 8552 → Partial infringement affirmed, partial infringement denied.**

This case also involves cat illustrations. The issue was whether the defendant's sale of T-shirts and other items bearing the defendant's illustrations infringed the plaintiff's copyright in the illustrations.

[Infringement]



[No Infringement]



Source: Judgment Appendix

**Mobile Legends Case: Tokyo District Court, April 22, 2022, Heisei 31 (Wa) 8969 → Partial infringement affirmed, partial infringement denied.**

The issue in this case is whether the character images included in the defendant's in-game screens infringed on the copyright of the plaintiff's character images.

[Infringement]



Plaintiff's Image 1



Defendant's Image 1

[No infringement]



Plaintiff's Image 2



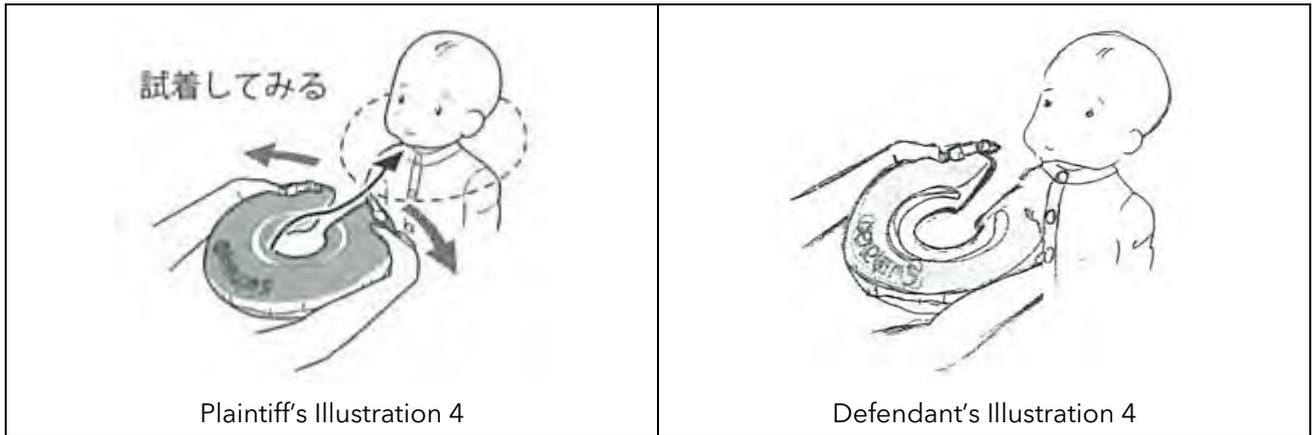
Defendant's Image 2

Source: Judgment Appendix

**Swimava Case: Tokyo District Court, July 27, 2016, Heisei 27 (Wa) 13258 → Partial infringement affirmed, partial infringement denied (plaintiff's Illustrations 1~3 were determined not to constitute copyrighted works).**

The plaintiff, a Japanese general agent, sued a direct import retailer (the defendant) for allegedly reproducing the explanatory texts and illustrations from the instruction manual created by the plaintiff for a baby float product named "Swimava."

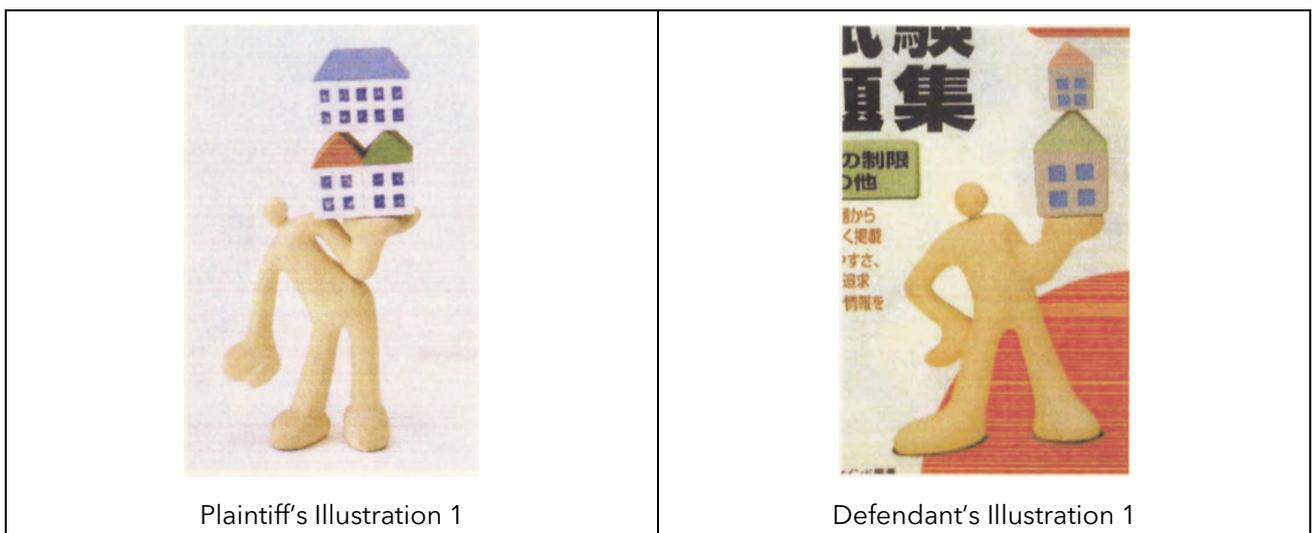
[Infringement]



Source: Judgment Appendix

**LEC Case: Tokyo District Court, June 25, 2004, Heisei 15 (Wa) 4779 → Infringement.**

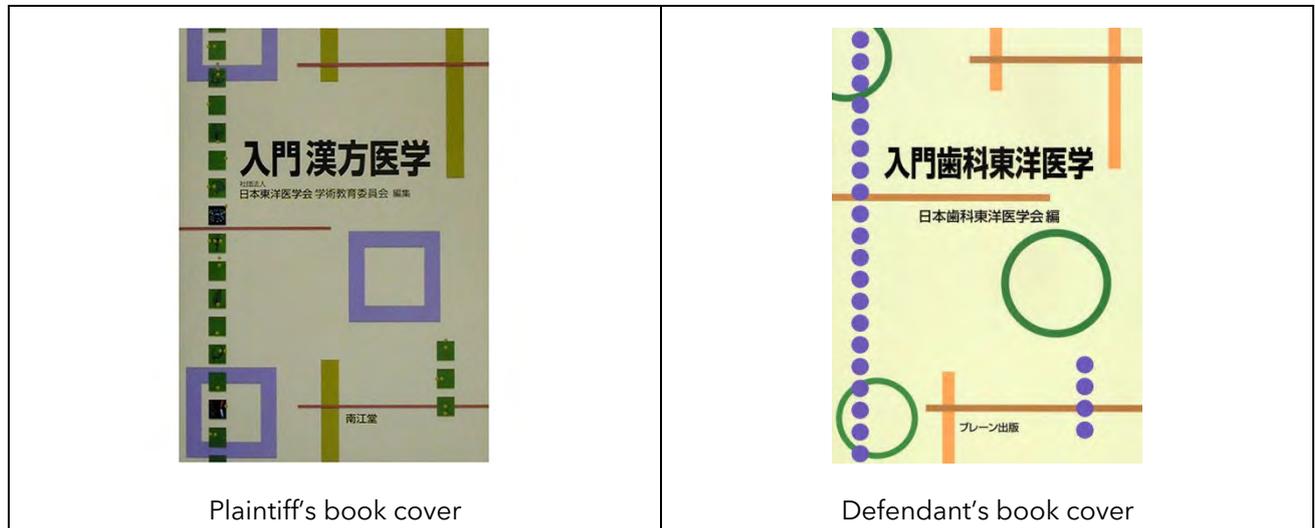
This case involves a lawsuit filed by the plaintiff alleging that an illustration used on the cover of a book published by the defendant is a reproduction or derivative work of an illustration created by the plaintiff.



Source: Judgment Appendix

**Introduction to Traditional Chinese Medicine Case: Tokyo District Court, July 8, 2010, Heisei 21 (Wa) 23051 → Infringement.**

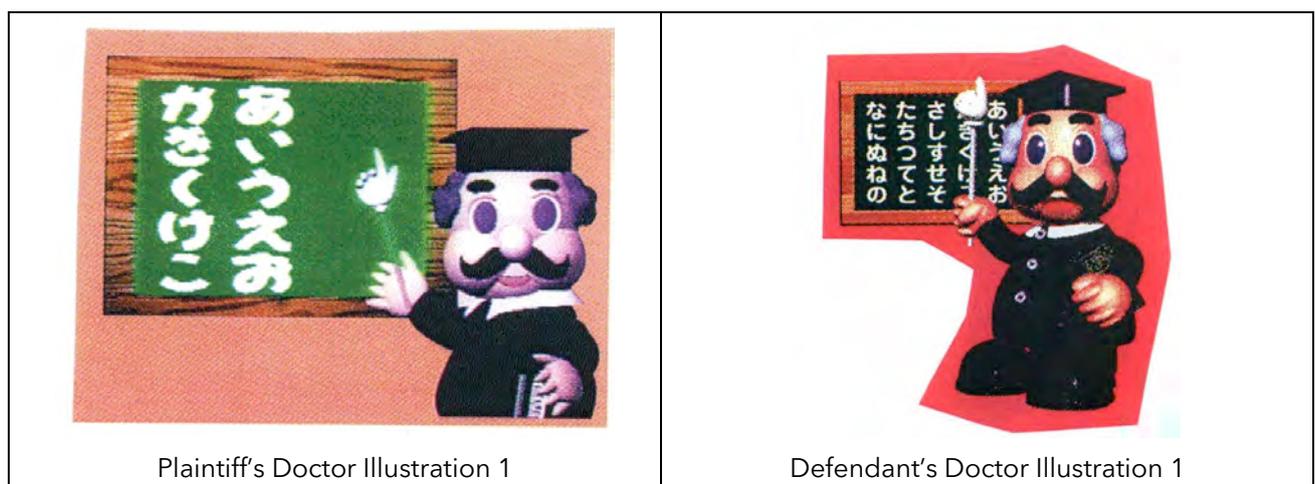
This case was filed alleging that the design used on the cover of the defendant's book was an unauthorized reproduction, adaptation, or modification of the cover of the plaintiff's book.



Source: Amazon

**Doctor Illustration Case: Tokyo District Court, July 4, 2018, Heisei 18 (Wa) 16899 → No Infringement.**

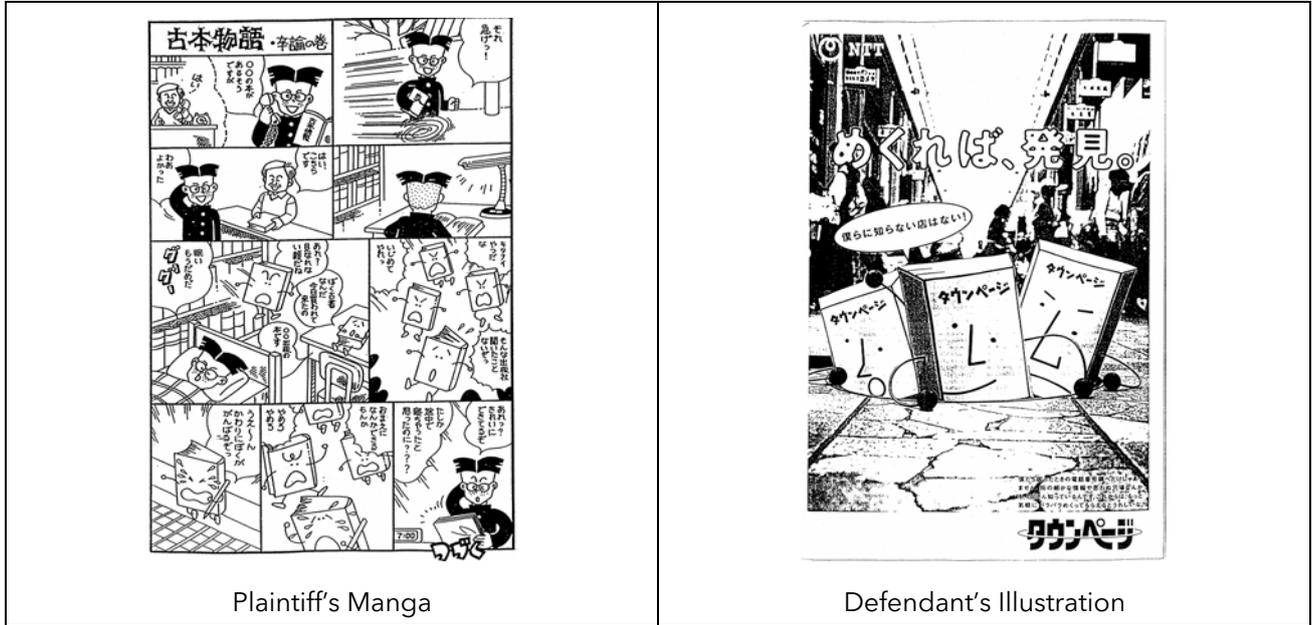
The plaintiff, a manufacturer and seller of educational VHS videos and DVDs for young children, sued the defendant, a seller of similar DVD products, claiming that the illustrations depicting a doctor used in the defendant's products were similar to those used by the plaintiff and constituted copyright infringement.



Source: Judgment

**TownPage Character Case: Tokyo High Court, May 30, 2000, Heisei 12 (Ne) 464 → No Infringement.**

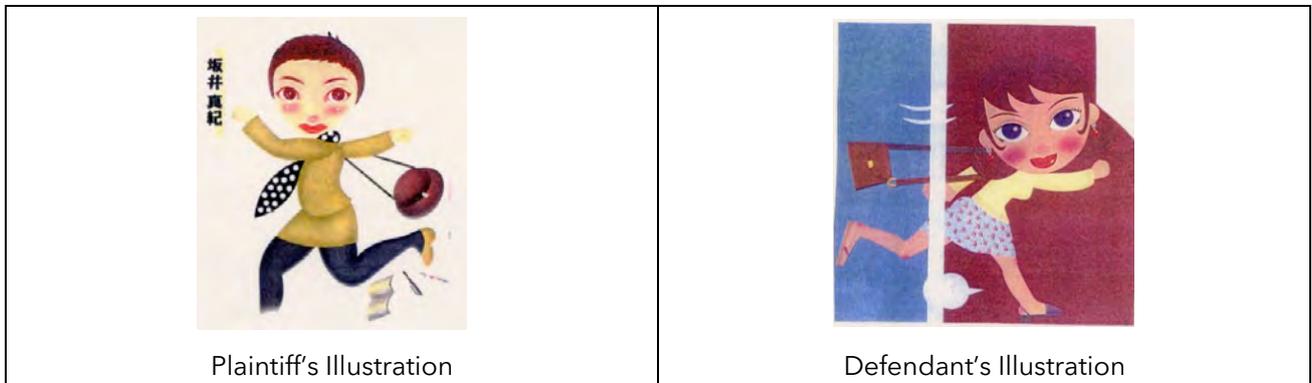
This case involved a claim that the characters in the TownPage were similar to those in the plaintiff's manga "Used Book Story", alleging copyright infringement.



Source: Tokyo District Court, December 21, 1999, Heisei 11 (Wa) 20965, First Instance Judgment Appendix

**Maki Sakai Illustration Case: Tokyo District Court, July 23, 1999, Heisei 10 (Wa) 29546 → No Infringement.**

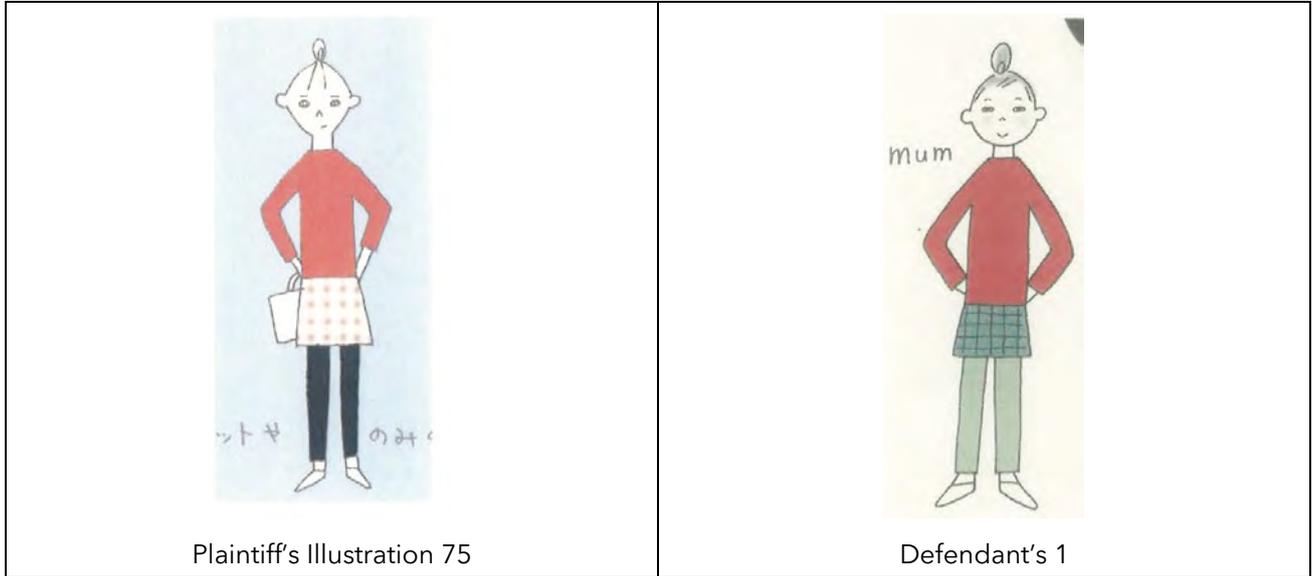
This case involves a lawsuit filed by the plaintiff, an illustrator, alleging that the defendant's publication of an illustration in the September 25, 1998, issue of TVLIFE magazine as an advertisement for a new talent audition infringed upon the plaintiff's reproduction right of the plaintiff's illustration.



Source: Judgment Appendix

**Daiwa House Case: Osaka District Court, March 26, 2009, Heisei 19 (Wa) 7877 → No Infringement.**

This case involved a dispute over whether numerous illustrations used in the defendant Daiwa House's apartment handbook infringed on the copyright of the plaintiff, an illustrator.



*Source: Judgment Appendix*

# Photographs

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The originality of photographs can be broadly divided into two aspects.

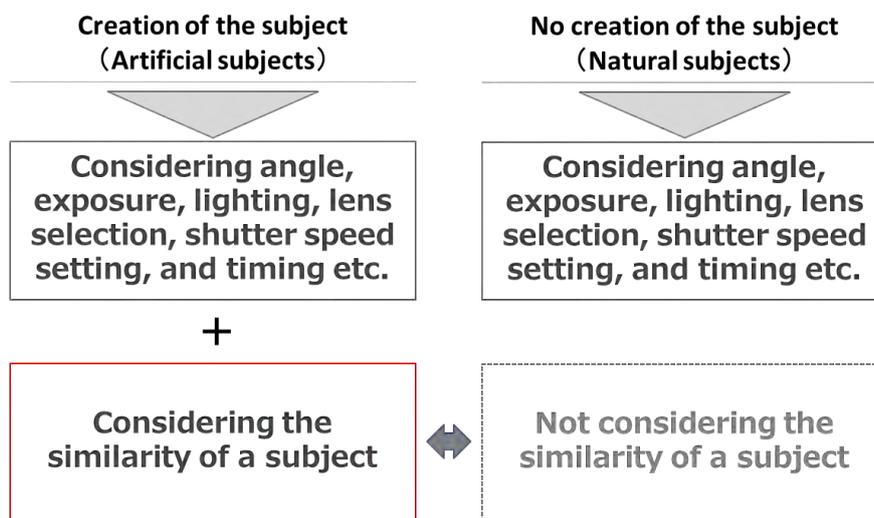
Firstly, technical considerations such as composition, exposure, shading, lens selection, shutter speed settings, development techniques, and timing of the shutter release are taken into account.

The second aspect is the subject matter. An important distinction here is between "artificial subjects" and "natural subjects". This distinction influences whether commonality of the subject matter is emphasized when determining similarity.

"Artificial subjects" mean the photographer creates the subject matter itself. In advertising photography, this includes cases where the photographer directs the arrangement and placement of products, the background, or, in the case of portraits, the model's pose, fashion, and makeup.

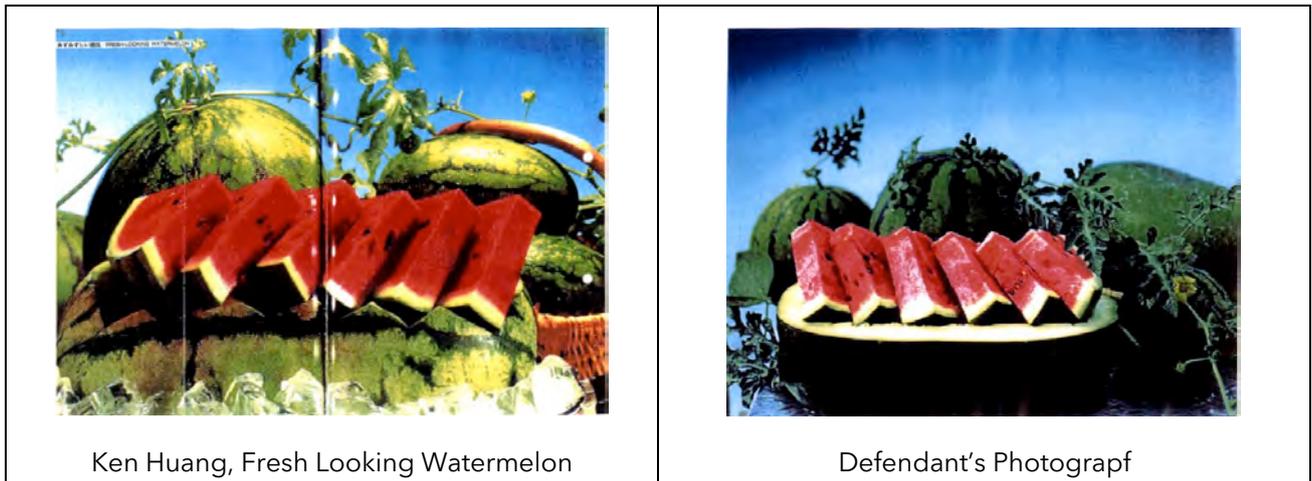
In contrast, "natural subjects" mean photographs of existing landscapes or buildings, where the photographer is not involved in the creation of the subject matter and instead captures what is already present.

In the case of artificial subjects, the commonality of the subject matter is considered for determining similarity, whereas in the case of natural subjects, the commonality of the subject matter is not considered.



**Watermelon Photo Case: Tokyo High Court, June 21, 2001, Hanji No. 1765, p.96 → Infringement.**

In this case, the plaintiff (appellant), a photographer named Ken Huang, claimed that the defendant (appellee) B had infringed upon the plaintiff's copyright (adaptation right) and moral right (integrity right) regarding the plaintiff's photographs by publishing the defendant's photographs in a catalog. The plaintiff sought an injunction against the publication of the catalog, its disposal, and compensation for damages. These photographs can be classified as artificial subjects.



Source: Judgement Appendix

**Spring Roll Photo Case: Tokyo District Court, March 30, 2022, Reiwa 2 (Wa) 32121 → No Infringement.**

This case involves the plaintiff's claim that the defendant's sale of products with the defendant's label stickers attached infringes on the plaintiff's copyright in the photographs. This is also a case involving artificial subjects.



Source: Judgment Appendix

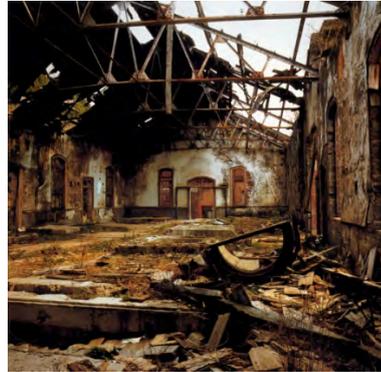
**Ruins Photo Case: Intellectual Property High Court, May 10, 2011, Hanta No. 1372, p.222**

**→ No Infringement.**

Both the plaintiff and defendant are professional photographers. The plaintiff, Shozo Maruta, claims copyright infringement, while the defendant, Shinichiro Kobayashi, denies the claim. The subject matter of the photographs is the same ruins (a case involving natural subjects).



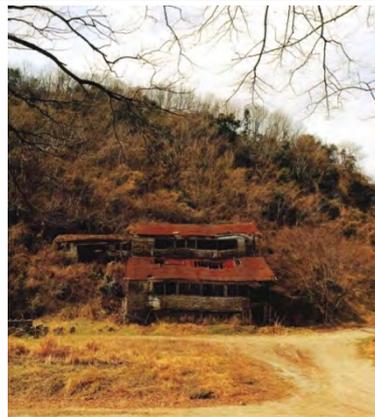
Plaintiff's Work 1-P



Defendant's Work 1-D



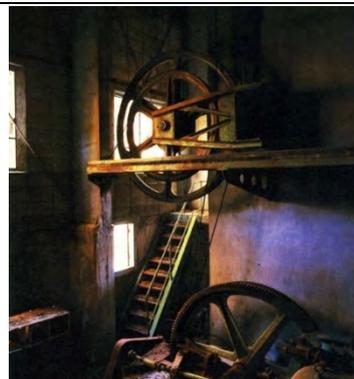
Plaintiff's Work 3-P



Defendant's Work 3-D



Plaintiff's Work 4-P



Defendant's Work 4-D

Source: Shozo Maruta Blog