Protection of Product Shapes in Korea

APAA 2026 Anti-Counterfeiting Standing Committee

Part II Special Topic

Young-Hyun CHO | CISUN International Patent & Law Firm

Hyungmok CHO | Bae, Kim & Lee IP

Introduction

Korea offers protection for some product shapes even without design or trademark registration. This can help when a product has entered the market but its shape is not yet recognized as a brand. I will address the six questions through the protection available, the action a business can take, and examples from Korean cases.

1 Can an unregistered product shape be protected

Yes. The Unfair Competition Prevention and Trade Secret Protection Act, referred to here as the UCPA, specifically protects against imitation of product forms. Neither registration nor established consumer recognition is required. It covers transferring, leasing, displaying for the purpose of transfer or lease, importing or exporting products that imitate another's product form.

There are two major limits. Protection lasts for three years from completion of the form, such as making a prototype. The clock does not necessarily start at launch. Forms ordinarily used for the same kind of product are also excluded. The claimant must establish copying and substantial identity; a similar idea is insufficient.

For example, a bottle shape completed eighteen months ago could potentially be protected against a substantially identical copy even if the bottle has no registered design and is not famous. A different brand name on the copy would not, by itself, answer that claim.

The Copyright Act may protect original artwork or sculptural expression distinguishable from a product's practical function. It does not automatically protect every attractive chair, bag or bottle. The UCPA also protects against source confusion where the shape identifies a particular source and is widely recognized in Korea. This is Korea's statutory route for passing-off-type conduct.

2 What enforcement is available

Under the UCPA's product-form imitation protection, a business can seek a court order stopping sales and claim damages where the requirements are met. It can also request an investigation by the Ministry of Intellectual Property. Criminal proceedings are available in qualifying cases, investigated by the Ministry's special judicial police, with penalties of up to three years' imprisonment or a fine of KRW 30 million. The Ministry may also issue corrective orders and publish non-compliance. Enhanced damages of up to five times the loss are not available for this claim. The Copyright Act separately provides civil and criminal remedies and administrative measures for qualifying copyright infringement. Since August 2026, intentional copyright infringement can attract damages of up to five times the loss, and criminal penalties of up to seven years' imprisonment or KRW 100 million.

The UCPA also prohibits unfair appropriation of another business's achievements. This can help in some cases, but requires separate proof of substantial investment or effort and unfair commercial use causing economic harm. A claim relying only on this broader rule does not have the same administrative or criminal route as the specific imitation rule.

3 What do actual cases show

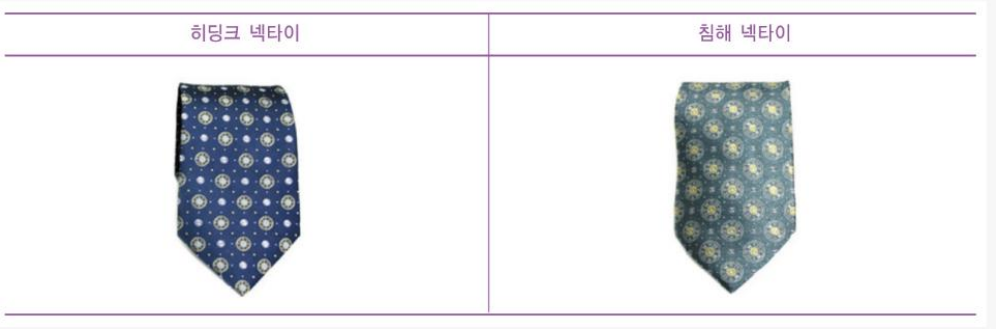
Four cases illustrate the possibilities and limits.

In the Hermès handbag case, the defendants sold bags resembling Birkin and Kelly bags with eye-shaped graphics added. Applying the UCPA, the Supreme Court held that the sales constituted unfair appropriation of Hermès' achievements. Adding those graphics did not prevent that finding. Claims based on source confusion and dilution were rejected; the decision rested on the unfair-appropriation rule. However, this concerned established designs with substantial commercial value. It does not mean every similar bag is unlawful, or that protection automatically continues after three years.



Hermès (left) / Play No More (right) — Supreme Court 2017Da217847

In the Hiddink necktie case (Supreme Court, 22 July 2004, 2003Do7572), a pattern design used on neckties was held protectable as a work of applied art under the Copyright Act, because it could be recognised as independent from the necktie itself. Specifically, the Supreme Court held that a necktie design may qualify as a work of applied art if it can be recognised as independent from the article in which it is used, and reversed and remanded the lower court's judgment, which had not properly examined that requirement. Separate artistic value was not required. The case concerned a two-dimensional pattern applied to a product, not the shape of the product itself.



Hiddink necktie (left) / infringing necktie (right) — Supreme Court 2003Do7572

In the Hello Kitty drama-costume case (Supreme Court, 29 March 2012, 2010Da20044), the goods showed Hello Kitty dressed in costumes from popular Korean TV dramas. Claims under the UCPA's rules on confusion as to the source of goods and on product-form imitation failed; for product-form imitation, a substantially identical form is required. However, the Court held the seller liable in general tort under the Civil Code for free-riding on the broadcasters' efforts. This judgment predates the UCPA's general clause on unfair appropriation of achievements, and suggests that similar conduct may now be protected under that clause.



Hello Kitty goods in TV-drama costumes — Supreme Court 2010Da20044

In the honeycomb ice cream case, protection under the UCPA's product-form imitation rule was refused. The appearance varied between individual servings, so there was no sufficiently consistent product form. The common idea of placing honeycomb on soft ice cream was insufficient. The practical lesson is to identify the particular appearance being copied, rather than claim ownership of a product concept.



Softree (left) / Milkcow (right) — Supreme Court 2015Da240454

4 Can customs and platforms help

The Customs Act provides border measures where goods infringe an eligible right, such as a Korean registered design, a registered three-dimensional trademark, or copyright. A claim based only on imitation of an unregistered shape does not itself provide the same customs detention route. Where an eligible right exists, rights recordation and clear identification materials can help customs detect suspected goods.

Platforms also operate their own reporting procedures, which depend on the legal right or unfair competition ground asserted. Coupang expressly accepts reports about imitation of unregistered product forms. Naver's published design-report procedure asks for a registered design right. Businesses should therefore choose a reporting ground supported by their actual rights. Acceptance of a report does not guarantee removal.

If a seller has copied the original business's product photographs or illustrations, those may support a separate complaint based on the Copyright Act. Removing a copied photograph does not, however, establish that the product shape itself is protected.

5 What should a business do after launch

First, establish when the product form was completed and when it was disclosed. Keep dated prototypes, drawings and development records. Preserve the alleged copy's listing, seller information and a sample before requesting removal.

Second, check whether design registration is still possible. Under the Design Protection Act, qualifying disclosure by the person entitled to registration may benefit from a twelve-month grace period. Launch therefore does not always mean the opportunity to register has been lost.

Third, if the shape is still within the three-year period, assess the UCPA imitation claim promptly. If that period has expired, examine copyright, Korean consumer recognition, and independently sufficient evidence of unfair appropriation. None provides automatic replacement protection.

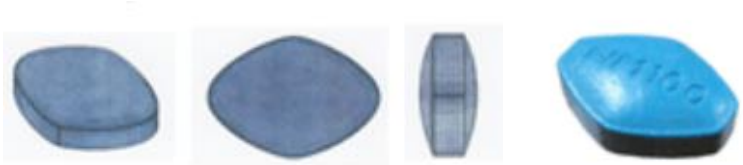
For future products, file appropriate designs before disclosure where possible. Use distinctive shapes consistently and retain evidence that consumers associate them with the business.

6 Does registration guarantee successful enforcement

No. Under the Design Protection Act, a registered design protects the registered appearance and similar designs, rather than a product's general idea or style. The comparison must address the registered features and overall appearance. Using a different brand does not itself avoid design infringement. In practice, prior designs narrow the scope of protection, and defendants frequently respond with invalidation actions.

Under the Trademark Act, a three-dimensional trademark protects a shape as an indication of source. Functional limitations and the actual trading circumstances remain important, as the following two cases show.

In the Viagra tablet case (Supreme Court, 15 October 2015, 2013Da84568), the issue was whether Hanmi's blue tablet, sold as Palpal, infringed Pfizer's registered 3D mark for its blue, rounded-diamond Viagra tablet. The Court accepted that the mark could well have acquired distinctiveness through use and was not clearly functional, since many alternative tablet shapes and colours exist. However, it held the marks not similar: Hanmi's tablet had cut corners giving a near-hexagonal outline and a different side profile, its name and "HM" appeared on the tablet and packaging, and prescription drugs are prescribed and dispensed by name. The unfair competition claim based on confusion failed for the same reason. The conclusion is that Pfizer's 3D mark was valid but not infringed: a registered 3D mark does not by itself stop a competing product that differs in shape details and carries clear markings.



Pfizer's registered 3D mark (left) / Hanmi's tablet (right) — Supreme Court 2013Da84568

In the towable water tube case (Supreme Court, 26 February 2026, 2023Hu11012), the issue was whether a competitor's use of a tube shape closely resembling the registered 3D mark was use as a trademark, or merely use as an ornamental design. The owner had sold the tube since around 2003, held a registered design for the same shape until it expired around 2019, and had registered the shape as a 3D mark. The Court held that design and trademark are not mutually exclusive, and that a

shape is used as a trademark if, in actual trade, it indicates source. Because the shape was distinctive, had become well known as the owner's source indicator, and the competitor appeared to free-ride on that reputation, the competitor's use was trademark use. The conclusion is that the "design use only" defence failed. Whether the competitor's tube is similar enough to fall within the scope of the mark was remanded to the Patent Court for further examination.



Registered 3D mark (top, four views) / competitor's product (bottom) — Supreme Court 2023Hu11012

Registration and successful enforcement are therefore separate questions. Remedies are, however, strong: since July 2025, intentional trademark or design infringement can attract damages of up to five times the loss.

Closing

The UCPA's product-form imitation protection can address the early protection gap without registration or established brand recognition. The essential practical questions are when the form was completed, what exactly was copied, and which enforcement route fits the evidence. After the initial protection period, further protection depends on a separate legal basis.