

B. Several Revisions

1. Amendments to the Consumer Contract Act

The Prime Minister shall consult the Fair Trade Commission (hereinafter “FTC”) and the Minister of Economy, Trade and Industry on the requirements under Article 13 of the Consumer Contract Act (hereinafter “CCA”) when certifying a qualified consumer organization (Article 15(2)).

When the FTC and the Minister of Economy, Trade and Industry recognize that the Prime Minister needs to take an appropriate measure against a qualified consumer organization, they may provide an opinion on the issue to the Prime Minister (Article 38(1)(i)).

The Prime Minister shall transmit the information to the FTC and the Minister of Economy, Trade and Industry on injunctions requested by qualified consumer organizations, by allowing them to review such information through electronic or other means (Article 23(5)).

2. Amendments to the Premiums and Representations Act

A qualified consumer organization under the CCA can seek an injunction against misleading representations by a business operator (Article 11-2).

Misleading representations by a business operator are defined by Article 4 of the PRA as:

(a) any representation by which the quality, standard or any other matter relating to the substance of goods or services are shown to consumers to be much better than the actual case or much better than that of other business operators who are in a competitive relationship with the business operator concerned, and thereby which tends to induce customers unjustly and to impede fair competition;⁹

(b) any representation by which price or any other trade terms of goods or services will be misunderstood by consumers to be much more favorable to the consumers than the actual one or than those of other business operators who are in a competitive relationship with the business operator concerned, and thereby which tends to induce customers unjustly and to impede fair competition;¹⁰
and

(c) any representation by which any matter relating to the transactions of goods or services is likely to be misunderstood by consumers and which is designated by the FTC as such, finding it likely to induce customers unjustly and to impede fair competition.¹¹

3. Amendments to the Specified Commercial Transaction Act

⁹ Art. 4(1)(i) of the PRA.

¹⁰ Art. 4(1)(ii) of the PRA.

¹¹ Art. 4(1)(iii) of the PRA.

Four cases went to court after the consumer group action system came into force. All of them are still pending.

| Plaintiff | Defendant | Filing Date | Summary |
|---------------------------------------|---|---------------|---|
| Kyoto Consumer Contract Network | Choei Co., Ltd. (real-estate leasing company) | Mar. 25, 2008 | Injunction against using a contract clause that requires a tenant to pay a landlord a fixed amount such as the cost for repair for ordinary wear and tear upon termination of the lease contract. |
| Kansai Consumers Support Organization | New Finance (consumer finance company) | Aug. 8, 2008 | Injunction against using the contract clause that forbids prepayment of a loan without penalty. |
| Kyoto Consumer Contract Network | Daiwa Kanko Co., Ltd. (real-estate leasing company) | Aug. 12, 2008 | Injunction against using the contract clause that allows a landlord to deduct a fixed amount as repairing cost for normal wear and tear from a tenant's deposit upon termination of the lease contract. |
| Kansai Consumers Support Organization | Fortress, Japan (operator of Global Trinity –English conversation school) | Aug. 28, 2008 | Injunction against undue solicitation of contracts. |

III. Remaining Issues

The previous report pointed out major issues in the consumer group action system.¹⁴ This report focuses on the issues of funding and monetary damages.

Japan Association of Consumer Affairs Specialists (certified on November 9, 2007);
 Kyoto Consumer Contract Network (certified on December 25, 2007);
 Consumer Net Hiroshima (certified on January 29, 2008); and
 Hyogo Consumer Net (certified on May 28, 2008).

In 2004, there were 2,825 consumer organizations in Japan. Cabinet Office, the Result of Basic Survey of Consumer Organization 2006 (2007).

¹⁴ See, Sugawara, *supra* note 1, at 11-15.

A. Funding

Subject to Article 13(3)(v) of the CCA, a qualified consumer group is required to have an organizational structure where expert advisers (consumer affair specialists¹⁵ and legal experts¹⁶) jointly give necessary advice on whether and why it should seek an injunction. Under the lack of financial resources, qualified consumer groups must depend more on voluntary work by such expert advisers.

As for the financial assistance for litigation, the Japan Legal Support Center currently operates a legal aid system¹⁷, and some local governments¹⁸ have consumer protection ordinance providing legal aid for consumers. However, such legal aid is a loan to be paid back.

On November 26, 2004, the Consumer Rights Protection Fund was established to assist the consumer group action system.¹⁹ A qualified consumer group can apply for financial assistance related to consumer group action. It is privately operated and relatively small because it relies solely on donations from business operators and consumers.²⁰ It is obviously desirable to establish public funds in order to ensure the smooth operation of the consumer group action system.

B. Monetary Damages

In consumer group action, a qualified consumer group is authorized to demand an injunction only. Receiving any monetary damages or property benefits is strictly prohibited.²¹

Under the Civil Code²², only compensatory damages²³ shall be awarded for breach of contract²⁴ and

¹⁵ *See*

tort.²⁵ However, such damages are insufficient in terms of disgorgement. Although the difficulty of calculating damages is one of the barriers against introducing monetary damages in the consumer group action system, some existing provisions can be informative. First, under the Antimonopoly Act, when any business operator commits an unreasonable restraint of trade, the FTC shall order the business operator to pay a surcharge to the National Treasury. The surcharge can be calculated by multiplying (i) turnover of object goods and/or services during an implementation period in which a violation was being committed by (ii) a fixed rate.²⁶ In the view of disgorgement, this calculating method may serve as a reference. Second, under the Code of Civil Procedure²⁷, when it is difficult for a plaintiff to establish the amount of damages because of the nature of damage, the court can determine reasonable damages based on the whole purport of oral argument and the result of examination of evidence.²⁸ The monetary damages as disgorgement can be used for establishing and administrating the above-mentioned public fund.

As of November 28, 2008

²⁵ Art. 709 of the Civil Code.

²⁶ Art. 7-2 of the Antimonopoly Act.

²⁷ Law No. 109 of 1996. The unofficial English Translation of the Code is available at <http://www.cas.go.jp/jp/seisaku/hourei/data/ccp.pdf>.

²⁸ Art. 247 of the Code of Civil Procedure.