

## ◇Trends in Consumer Issues

### *Japanese government initiatives to protect consumers from across-border fraudulent and deceptive commercial practice - Part I -*

The spread of the Internet has given consumers a new choice referred to as "electronic commerce." This choice has made conducting long-distance or cross-border business transactions, which were time-consuming using conventional trading approaches, much easier. Consumers are now able to access merchandise and services around the world from their homes and convenience has thus been considerably improved.

At the same time, consumers now have an increased chance of becoming the victims of unscrupulous traders not only in Japan but also overseas. When they are harmed by dishonest traders overseas, considerable time and trouble must be expended in recovering their losses as Japanese laws do not apply to these cases and negotiations in local languages are required.

In order to counter this situation, the OECD announced on June 17, 2003 the "Recommendation of the Council Concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders." The gist of the recommendation is as follows:

- Steps to be taken in each member country
  - Cooperation between consumer-advocate groups and law-enforcement authorities and information sharing among these bodies
  - Review of laws that hinder cross-border cooperation
  - Upgrading of consumer education
  - Cooperation with the private sector
- Establishment of database for information sharing among countries
  - Advocating the establishment of a database that contains the following information:
  - Information about consumer complaints
  - Information including locations, telephone

numbers and data on businesses to identify dishonest traders

- Expert opinions or information on deceptive practices
- Documentary evidence obtained through legal means

The types of fraudulent business practices being considered include the following cases:

- Creating a false perception in order to sell merchandise or a service to consumers
- The ordered merchandise is not delivered to the buyer or additional charges are added without prior notice

There are many cases where consumers, deceived after placing orders with sellers in other countries, find themselves unable to obtain redress as no domestic laws can be applied to the sellers. What is urgently required so that consumers can recover damages is for concerted efforts to be made under a multilateral collaborative system. As clampdowns by foreign governments on fraudulent business transactions aimed at overseas consumers are also expected, the governments of the affiliated member countries will develop the necessary laws and systems along with the OECD recommendation.

In June 2003, the Cabinet Office, to deal with the various issues set forth in the recommendations concerning the situation in Japan, set up the "Liaison Council on Cross-border Troubles" under the Consumer's Affairs Division Managers Conference. The council comprises the Cabinet Office, Japan Fair Trade Commission, National Policy Agency, Foreign Ministry and Ministry of Economy, Trade and Industry. The NCAC, as a consumer issue-related information gathering institution, participated in the council.

Since its first meeting in September 2003, the council had held five meetings by May 2004. During this period, it has reviewed the present state of cross-border consumer problems, the countermeasures taken by the ministries and agencies -and how to cope with these problems

when they happen. In its 5th meeting held in May 2004, the constituent members approved the results of its review and decided on the basic policy for countermeasures. The contents of the countermeasures will be introduced in Part II of the next issue (Vol. 16 No. 2).

## ◇Activities of the NCAC

### —Product Testing—

#### *Performance of Pollen Masks*

With the number of people suffering from pollen allergies on the rise year by year, many people can now be seen wearing pollen masks. There are a variety of pollen masks on sale now, ranging from conventional, flat gauze masks and those with non-woven cloth to 3-dimensional masks for a better fit. Their prices vary. The NCAC has conducted testing on the differences in pollen-trapping capacity depending on the materials and shape of the masks and whether they come with warning labels or not, and obtained the following results:

- The pollen-trapping capacity of the tested masks, in spite of the differences in the materials (gauze or non-woven cloth), kinds of filters and differing prices, showed high rates of 99.5% to 100%.
- In spite of the high trapping rates of the masks themselves, there were some cases where their trapping rates fell by 20% because of the gaps between the face and the masks when put on. It is important, therefore, that the masks fit snugly around the face.
- Some brands are also aimed at a range of small particles other than pollens, but their instructions fail to show to what degree they are effective and how the data were evaluated.

Based on the above results, the NCAC has given the following advice to consumers:

- As the pollen-trapping capacity is high regardless of the brands, it is important to make sure the mask fits the facial features to make the best of its capacity.
- As there is no difference in performance regardless of the price, a low-priced mask is sufficient.
- To trap particles smaller than pollen grains, it is recommended that a non-woven mask with a special filter be used and it should fit the facial features of the mask wearer.

Additionally, the NCAC has requested the mask-making industry and the government to supply better masks to consumers with easy-to-understand instructions.

## *Liquid Crystal Display (LCD) of Mobile Phones*

Most of the latest mobile phone models feature functions for e-mail and surfing the Internet. Because of these new functions, there has been a tendency for mobile phone LCDs to become larger.

The NCAC have been receiving consumer complaints via The PIO-NET (Practical Living Information Online Network System) that their LCDs are broken. Many of the people who contacted local consumer centers or the NCAC for advice have no idea why their LCDs have broken or have little awareness of how this damage occurred. Complaints include that they cannot agree with paying for the cost of repairs that run from several thousand yen to ten thousand.

The NCAC, therefore, has conducted a questionnaire survey on consumers' mobile phone usage, telecommunications carriers' product warranties and awareness. Based on the results of this survey, the NCAC carried out experiments on mobile phones to find out whether LCDs get damaged or not by being subjected to compression, being closed with an object between the hinged portions of the phone or impacts when dropped, all of which may happen in day-to-day usage. The following results were obtained:

- When compressed under an uneven load, some LCDs or sub-displays got broken.
- When the phones were folded into two with small, thick objects sandwiched in between, some LCDs or sub-displays were broken.
- When dropped on pointed objects, some LCDs or sub-displays were broken.

Based on these results, the NCAC gave the following advice to consumers:

- As the mobile phone is compressed, it is subjected to uneven pressures. This may cause some phones to break and mobile phone users, therefore, should be careful about where they are stored and how they are carried around.
- When the mobile phone is folded with an object in between the two parts, even relatively low pressures can damage LCDs and sub-displays in some cases.
- Impacts caused by even a minor drop can break LCDs.

The NCAC has also requested the mobile phone-related industries to reduce the financial burden to consumers when their LCDs are broken.

## *LCD and Plasma TVs*

Thin color TVs based on LCD or plasma have been becoming increasingly popular in recent years. Additionally, from December 2003, terrestrial digital broadcasting got off the ground in some areas including Kanto. The NCAC, therefore, has tested thin color TVs with respect to their display performance and reception quality of terrestrial digital broadcasting with Hi-Vision broadcasting and found the following:

- LCD TVs had some drawbacks in image response and fields of view. Slant lines and border lines on Plasma TV's, on the other hand, looked jagged. Their displays had a tendency to reflect sunshine from windows and artificial lights.
- With respect to power consumption and in comparison to a 32-inch CRT TV, LCD TVs of the same display size turned out to consume almost the same amount of power as the CRT TV, while plasma TV's power consumption was 60% greater.
- In areas where ghost images occur, considerable improvements in picture quality can be expected with digital broadcasting.
- The thin LCD or plasma TV is expected to become the mainstream in the future, but it is still expensive at the moment, costing twice as much as a conventional CRT TV.
- Unless their existing TV needs to be replaced, it is recommended that consumers continue to enjoy their CRT TV for the time being.
- To get the most out of the high picture quality of terrestrial digital broadcasting, Hi-Vision broadcasting is recommended.
- Be careful to avoid impacts to the flat-panel display.
- Be aware that plasma TVs may cause afterimages.
- When installing a thin TV, take steps to prevent them falling or toppling over. Where a thin TV is mounted on the wall, have an expert install it for you.
- Do not block off the ventilation holes on the upper side behind the TV set.

### —Surveys and Studies—

#### *Charges for International Calls You Don't Recall Having Made*

There are two types of problems involving "charges for international calls that you don't recall having made".

- The "voice-based" problem occurs in telephone services that offer "voice-based" information provision using international calls in which the segments of the telephone number dialed are switched so that the caller does not realize that it is an international call.
- The "image-based" problem occurs when an Internet user downloads an access program while browsing Websites.

With respect to "image-based" scams, international telephone companies ceased to accept calls to the specific areas from around December 2002. As a result, the number of inquiries dramatically declined. But when they were analyzed, it was found that while the "image-based" problems have been falling, those involving "voice-based" schemes have not decreased much. In view of this, the NCAC asked

the international telephone companies to take the following measures:

- Implement voice guidance.
- Continued monitoring in target service areas
- When new problems occur in a new country or area, the connection service to this country or area should be discontinued.
- When internal telephone charges exceed a certain amount, notices or telephone bills to telephone subscribers should be sent at shorter intervals.
- Alert telephone users to international telephone problems.

Additionally, the NCAC gave consumers the following advice:

- With respect to the "voice-based" problems, telephone callers, when dialing a number in a magazine, should confirm what kind of the telephone number it is. If unable to confirm, do not dial the number.
- With respect to the "image-based" problems, Internet users using a dial-up Internet connection should refrain from downloading suspicious software.
- Telephone subscribers who do not make overseas calls on a routine basis are able to protect themselves from international call problems by using the international call service stoppage system offered by telephone companies.

#### *Characteristics of Child Consumer Problems and Responses to Them*

The number of consumer inquiries involving children (6-17 years old) has been rising at a rapid pace. The number of inquiries filed at the PIO-NET in fiscal 2002 shows a 4.4-fold increase over fiscal 1996, exceeding the 2.4-fold increase in the total number of nationwide inquiries.

The increase in problems involving children is influenced by the social change often referred to as "the highly-networked information society". The reasons why children younger than 18 years old are having problems are as follows:

- With the popularization of information and communication services through the Internet or telephone, even children find them easy to use.
- The number of children using mobile phones and PCs has increased.

Due to the above factors, the cases of children being involved in no-holds-barred solicitations and sales are becoming increasingly visible. On the other hand, there are cases in which children's curiosity and desire to consume were the source of the problem.

The NCAC, therefore, conducted a survey to examine the following matters:

- The trends and characteristics of child-related consumer inquiry cases
- The characteristics of child-related consumer problems as they appear in consumer inquiries

•Consumer support measures for children  
The summary of the survey is as follows:

- Trends and characteristics of child-related consumer inquiries
  - By age bracket, inquiry cases increase as children progress through grade school, junior high and high school.
  - In chronological order, cases involving "information services by telephone" and "international calls" have been surging.
  - Inquiries involving "electronic games," "video software" and "model guns" have been on the decline.
- The characteristics of child-related consumer problems as they appear in consumer inquiries
  - Indiscriminate solicitations and sales are harming children in the same manner as adults.
  - When children purchase items their parents are not likely to consent to, contracts are made without prior notification of parents, which is one of the reasons why these problems are not exposed early on.
  - As sales are targeted at children without much knowledge and experience, traders tend to make a sale in an inappropriate manner and do not provide adequate information.
- Consumer support measures for children
  - The most important thing is that parents understand their children's consumption behavior or the reality of the trouble so they can develop appropriate purchasing habits.
  - It is critical to upgrade consumer education in schools so that everybody can participate.
  - The local community should help children to grow into wise consumers through firsthand experience.

### *Dating Sales Practice: Rising Number of Inquiries and Contract Amounts—How to Avoid Problems*

The number of cases involving dating sales practices has been increasing. In fiscal 2003, it increased 12% over the previous year. The number of people who signed up for such sales contracts is almost the same by sex. Ninety percent of them are in their 20s and the average age is 23.1 years old. This issue is peculiar to the younger generation.

This practice involves salespersons, when making a pitch, making potential buyers of the opposite sex feel affection for the salespersons through "sweet talk" and then selling goods by exploiting their affection.

Seventy percent of the cases related to the dating sales tactics involving contracts signed during "appointment sales." The main points are 1) "the salesperson does not clarify beforehand that merchandise is being sold," 2) "although the offer was declined, the salesperson persisted in trying to make a sale" and 3) "when the cooling-off rule was invoked, it was turned down."

Lately, many cases have involved persons with whom the victims got acquainted on meet-a-mate sites, only to discover that these people were salespersons.

There was a case when a phone call to victim's home led them to exchange e-mails and when they got together, the telephone caller turned out to be a salesperson. The salespersons do not inform their target of the true purpose of their activities, namely selling merchandise, in the beginning. Only after meeting for the first time do the sales persons recommend that the target purchase merchandise. Therefore, it is difficult for the consumers to realize that the phone calls from strangers are part of solicitation activities by unscrupulous traders.

The NCAC views as problems sales techniques that are becoming increasingly devious, the increase in the number of consumers contacting the NCAC for advice and the rising contract amounts and gave the following advice based on the actual facts of the cases they examined and an analysis of the problems:

- The recipient should suspect that phone calls from strangers of the opposite sex are sales calls by tele-marketers.
- The only reason salespersons are sweet and kind is because this is their technique to sell merchandise.
- The document in order to declare Cooling-offs should be sent to the representative of the company.

### *Beware of "Foreign Lottery" Scams by Direct Mail!*

The number of inquiries involving "foreign lotteries" originating from Australia and Germany has been rising of late. The NCAC has analyzed the data of these cases filed in the PIO-NET and outlined the controversial points as follows:

- Direct mail announcing "you've already won the lottery" or "you're sure to win" may be misleading to consumers.
- There are many questionable points such as:
  - Pressure on the recipient to purchase by showing the deadline.
  - There are expressions that may cause misunderstanding, such as the prize money, even if received in Japan, is non-taxable.
  - The method of confirming winning numbers is not clear.
  - Phone calls to the numbers listed in the direct mail are often unanswered.
  - When the companies selling lottery tickets are located overseas, it is difficult to go the country concerned and resolve the problems. As differences in laws are involved, recovering losses is difficult and it takes a long time to solve problems.
  - By purchasing foreign lottery tickets in reply to unsolicited direct mail, consumers run the

risk of further leaking their private information.

- Selling foreign lottery tickets, handling them for re-sale or giving and receiving them in Japan are construed as possible violations of Article 187 (sale of lottery) of the Criminal Law.

Based on the above problems, the NCAC gave the following advice:

- Do not fall into a trap of enticing words such as "you've already won the lottery" or "you're sure to win" when you haven't purchased a ticket.
- Never give out your credit card number to untrustworthy parties.
- Do not inform them of your telephone number as this leads to further leaking of your private information.
- Do not purchase foreign lottery tickets as trading in such lottery tickets in Japan is unlawful under Article 187 of the Criminal Law.
- Consult your nearest Consumer Center.

### *Visitors from Foreign Countries*

★ Chinese Academy of Social Sciences, Staff of the Institute of Law, Counsel of Kehua Law Firm, Dr. Yu Min, and Staff of China Consumers Association, Mr. Chin (Feb. 13)

★ Staff of Verbraucherzentrale Bundesverband e.V., Verbraucherzentrale Berlin e.V., Friedrich Ebert Stiftung and Lehrstuhl Für Privatrecht Jean Monnet Chair on European Economic Law, Prof. Dr. Hans-W. Micklitz (Feb. 17)