

◇Trends in Consumer Issues

Legislative moves to enact a law to promote the use of an alternative dispute resolution system

Alternative Dispute Resolution (ADR) is a way of settling disputes provided by courts, administrative institutions or civilian organizations without recourse to judicial trials.

When disputes occur in day-to-day life or in the course of business activities and they are not resolved by talks between the affected parties, they are generally brought to the court for solution. Bringing a case to the court usually consumes considerable time and money before a settlement is reached. ADR is expected as a new means of solving these problems. Unfortunately, ADR, as it stands now, is not functioning particularly well.

There are the following issues affecting ADR:

- More information on ADR needs to be provided to people wishing to utilize ADR
- Secure competent third parties are needed to mediate, conciliate and arbitrate
- A financial base needs to be secured
- The structure of the ADR system needs to be improved

The government has been forging ahead with the reform of the present judicial system to make it more serviceable and accessible. In its approach to judicial system reform, the government is reviewing the utilization of the ADR system, regarding it as a convenient mechanism to settle disputes out of court simply and expeditiously. The history of the government's judicial system reform is as follows:

- The law for establishing the advisory panel for reforming the judicial system came into force (June 9, 1999).
- The advisory panel for reforming the judicial system was established in the cabinet (July 27, 1999).
- The advisory panel's report for reforming the judicial system was submitted to the cabinet (June 12, 2001).
- The law for promoting the judicial system reform was proclaimed (November 16, 2001).
- The judicial system reform promotion headquarters was set up in the cabinet (December 1, 2001).
- The judicial system reform promotion plan was approved in a Cabinet meeting (March 19, 2002)

ADR is explicitly described in the advisory panel's report for reforming the judicial system as follows:

- ADR, unlike the strict legal proceedings, is one way of facilitating flexible settlements of disputes in line with realities in a simple and expeditious manner and at a reasonable cost.
- What is required to improve and vitalize ADR is increased coordination with the institutions

concerned and finding common ground on ADR.

Pursuant to this report, the judicial system reform promotion plan, which prescribes the measures the government has to take, details measures for ① strengthening coordination with the related institutions and ② finding common ground on ADR. The current situation related to the discussions on these two issues is as follows:

- Strengthening coordination among related institutions

In April 2003, the "related government ministers and agencies' meeting on the improvement and vitalization of ADR," which was established in the judicial system reform promotion headquarters, reached agreement on the action plans for strengthening the coordination among the related institutions to improve and vitalize ADR.

- Finding common ground on ADR

The ADR meetings attached to the judicial system reform promotion headquarters debated the measures required to find common ground on the ADR system and conducted hearings with the participation of concerned parties.

In October 2004, the judicial system reform promotion headquarters, acting on the results of the above meetings and public comments, prepared a bill for the law concerning the promotion of the use of alternative dispute resolution and has submitted it to the 161st extraordinary Diet session (on November 15, 2004). The bill contains the following details:

- The basic philosophy of ensuring the ADR system is carried out fairly and appropriately
- Responsibilities of the government, etc.
- A certification system for private sector operators offering ADR services

When the bill is enacted and carried out, private sector operators offering ADR services will be able to receive certification from the Minister of Justice. This certification system can be summarized under the following five points:

- Exclusive indications of certified business operations
- Carrying out ADR by experts
- Suspension of the statute of limitations on request under an ADR system
- Abatement of legal proceedings when settling disputes under the ADR system
- Non-application of pre-mediation principles for divorce consultations, etc.

With promotion of utilization of ADR, it is expected that many types of disputes thus far considered difficult to settle will be processed smoothly.

◇Activities of the NCAC

—Product Testing—

Preventing domestic fires - No. 1 - Cooking oil fires while cooking deep-fried food

According to the "2003 Fire-Fighting White Paper," the commonest cause of domestic fires is the failure to turn off the cooking stove.

In January 2004, NCAC, at the request of an outside organization, conducted a test in which a small amount of cooking oil was used for deep-fried food. The test results revealed cooking oil temperatures went up so quickly that it caught fire by itself in a short time. Then we again tested cooking oils to find ignition temperatures and the time it took to ignite depending on the conditions in which they are used and whether there is any risk involved. The results we obtained are as follows:

- Cooking oils with certain specific characteristics regarding their ingredients tended to catch fire at rather low temperatures and the time to ignite was relatively short. At a high heat, some of the oils caught fire in less than half the time indicated on the labels.
- When a small amount of oil was used, all brands reached ignition temperatures in 6 - 7 minutes, posing a fire risk within a short time.
- When foods with a high water content, such as tofu, were fried, there were cases in which some of them caught fire below 300°C.

With the above results in hand, the NCAC gave the following advice to consumers:

- Along with the increased variety of cooking oils, cooking oil ingredients differ widely from brand to brand. Consumers should, therefore, pay attention to the fact that ignition temperatures and the time to reach ignition temperatures differ.
- When frying with a small quantity of oil or putting food in the heated oil above the temperatures appropriate for fried food, it is necessary to take extra precautions as the time required to reach the ignition temperature is shorter.
- Consumers should be aware of the dangers involved with spattering and bubbling when frying foods with high water content or the foods that tend to burst when placed in hot oil.

The NCAC at the same time made the following requests to industry and government:

●Requests made to industry

- As ignition temperatures and the time required to catch fire differ depending on the particular brand, the industry was asked to consider showing more detailed information on the quality label.
- The industry was also requested to provide warning statements on ignition temperatures that correspond to actual usage on the quality label.

●Requests made to government

In view of cooking oils with certain specific ingredients and the diversified usage situations, any information on the possibility of cooking oils catching fire should be more precise and detailed.

Preventing domestic fires - No. 2 - Testing results of aerosol-type handy extinguishers

Concerning aerosol-type handy extinguishers, which are becoming increasingly popular, the NCAC has tested their fire-extinguishing capabilities and ease of use and obtained the following test results:

- Some imported extinguishers were found to be hazardous when used for cooking oil fires.
- Fire-extinguishing capabilities of domestically made extinguishers correspond to the information contained on their quality labels, although some were not able to put out the fires completely.
- There were some extinguishers that were difficult to use or had labels that were difficult to read.
- Some defective extinguishers were found for some of the brands. When the button was pressed, these defective units failed to discharge the extinguishing agents.
- Extinguishers using halon or chlorofluorocarbon (CFC) alternatives that are controversial regarding their impact on the environment were on sale.

Pursuant to the above results, the NCAC gave the following advice to consumers:

- When purchasing an extinguisher, consumers should carefully examine the certification mark, the types of fires for which the extinguisher is suited and the kinds of fire-extinguishing agents indicated on the quality label.
- As the handy extinguisher is intended for small-scale fires only, it is desirable that consumers have regular extinguishers available.
- When using the handy extinguisher, consumers should make sure to use it until it runs out.
- Do not attempt to reuse the handy extinguisher after it has been used once.
- The contents of out-of-date handy extinguishers should be discharged according to the instructions and be disposed of according to the instructions of the municipal government.
- Handy extinguishers containing halon or CFC alternatives are problematic from the viewpoints of the environment, safety and disposal.

The NCAC has made the following requests to industry and government:

●Requests made to industry

- Improvement of fire-extinguishing capabilities
- Immediate attention to handy extinguisher brands that are not appropriate for tempura oil fires and the brands that had many faulty products in their product lines.
- Improvement of handy extinguishers so that they are easy to use and their quality labels are easy to read.
- Improvement on the displaying of important information on products
- Specific explanations of disposal methods
- Voluntary sales restraints on halon or CFC alternatives-containing handy extinguishers
- Improvements of statements such as "semi-permanently usable" or the reference to national certification by the country of origin without a certification mark on the label.

- Requests made to government
 - Implement measures against the import and sale of handy extinguishers containing halon (Halon 1211)
 - Government guidance on handy extinguishers containing CFC alternatives (HFC-227ea and FM200)
 - Government guidance on those indications that may give rise to misunderstandings or confusion

—Surveys and Studies—

Requests for the disclosure of connected websites in packet telecommunication

Not limited to phone calls, today's mobile phones are equipped with various functions, such as Internet access and/or e-mail functions (hereinafter referred to "communication function"), helping to enhance their convenience enormously. However, problems involving the added communication capabilities are on the rise, most noticeable among them of late being those related to Internet access charges.

When the mobile phone user uses the communication function, the fee-calculating system that is based on the amount of two-way data is applied. For this reason, which websites were accessed or where e-mail was sent is not the base on which the mobile phone company calculates packet communication charges and nor is the company required to disclose which websites were accessed or where the e-mail was sent. Mobile phone company's telephone bills, therefore, only state access dates and time and the amount of data used.

Most of mobile phone users seeking our advice typically complain that the packet communication charges on their phone bills are higher than usual, but that they do not recall having used that much.

The causes of the complaints from consumers are due to the fact that the phone users are not able to confirm where and when they accessed and the resultant packet communication charges on the mobile phone company's phone bills or usage details, making it difficult for them to find the reasons for the high packet communication charges.

Added to this, mobile phone users are suspicious of other people abusing their phones by way of "clone mobile phones*" that have made their appearance recently (Mobile phone companies deny the existence of "clone mobile phones.")

* Clone mobile phones mean where third persons illegally copy (clone) other people's officially contracted mobile phones.

In response to these complaints, the NCAC asked the Telecommunications Carriers Association on May 26, 2004 to ensure that its member companies disclose accessed websites in packet communication and that this information is shown in their phone bills.

At the same time, the NCAC gave the following advice to consumers:

- Consumers should realize that downloading a large volume of data, such as graphics and online games will make their packet communication charges very expensive.
- Consumers should prevent overuse of the phone by making positive use of the various services offered by the mobile phone companies, such as those in which the phone user can check out phone charges or those which let the users know when their phone bills exceed certain amounts.

Learning materials sales coupled with learning guidance is causing troubles

Consultations concerning learning materials have always ranked high among the complaints received on door-to-door sales in the past several years. There were 41,298 consultations that were input in the Practical Living Information Online NETWORK System (PIO-NET) during fiscal 1999 through 2003, and they are still rising. With respect to complaints on expensive learning materials purchased by consumers when told they were necessary to receive learning guidance by private tutors or cram schools, problems involving mid-course cancellations are particularly prominent.

There have been numerous complaints concerning learning materials sales that came with learning guidance in the past. In 1999, the sale of service and its related products (products that persons receiving service have to purchase) was designated as "specific continuous service offering" in the law concerning home sales (now the specific commercial transaction law), making it subject to the cooling-off system and rights to cancel mid-way.

In spite of this, the number of complaints has not declined. What is particularly noticeable among them are the cases where cancellations of tutors or cram schools are accepted but not the learning materials, which were purchased as part of the contracts. Even if mid-course cancellations are accepted, there seems to be no end to consumers complaining that they were charged exorbitant cancellation fees as there is no reasonable cancellation standard in the specific commercial transaction law.

The NCAC, therefore, has put in perspective the actual situation and questionable points concerning learning materials sales with learning guidance and provided information on the issues that require consumers' attention when entering into a contract. The gist of our advice to consumers is as follows:

- Confirm salesperson's sales claims in writing.
- Refrain from purchasing expensive learning materials in a large quantity at a time.
- Confirm whether the contract sheet contains provisions for mid-course cancellation.
- Beware of statements on "recommended products."
- When problems are encountered, contact local consumer centers to obtain advice as soon as possible.

Relevant points and improvements concerning the voluntary rules by the door-to-door sales industry

As pointed out by the Quality-of-Life Policy Council and the Consumer Affairs Fundamental Act (revised in 2004), voluntary rules by trade associations are crucial in making clear the member companies' responsibilities in sales activities and redress of damages and in promoting consumer protection.

Consequently, the NCAC has made recommendations to industry that are based on the following three points:

- ① The results of analysis on consumer complaints of door-to-door and mail order sales in view of rising complaints over door-to-door sales to elderly people and mail order sales to underage youths
- ② The results of analysis of the relevant points of

the voluntary rules set by the Japan Direct Selling Association and the Japan Direct Marketing Association

- ③The survey results of the voluntary rules by trade associations in Australia and the U.K.

The summary of our recommendations is as follows:

- Basic concepts
 - Trade associations' roles in the consumer basic law
 - Improvement of the content of voluntary rules
 - Necessity of incorporating effective mechanisms, such as joint regulations, in the voluntary rules to ensure their effectiveness
 - Strengthening measures for industry outsiders
- Indication of improvement points in the Japan Direct Selling Association's voluntary rules, etc
 - ◇Japan Direct Selling Association
 - Improve the ways in which compensation for damages is provided including full refunds that depend on the issues involving canvassing including law violations.
 - Establish specific rules prohibiting canvassing aimed at the elderly and those unable to make informed or rational decisions.
 - Observe the responsibility to allow a cooling-off period.
 - To earn consumers' trust, six remedial measures, including improving the education and training systems for salespersons were recommended.
 - ◇Japan Direct Marketing Association
 - Two remedial measures, including a rule governing contracts where underage youths would require parental consent, were recommended.

Beware of gel-type antifebrile cooling sheets

In late April 2004 in Hokkaido, when a mother nursing her 4-month-old baby boy with a gel-type antifebrile cooling sheet left him alone in order to clear the dinner table and returned to her baby, she found him choking from the cooling sheet covering his mouth and nose. Although the baby, who was rushed to the hospital and given every kind of life-saving treatments, including artificial respiration, barely escaped death, he was diagnosed to have hypoxic ischemic encephalopathy and the possibility of being left with a severe disability requiring full-time care throughout his life is very high.

In addition to conducting an adhesive force test of the cooling sheets of the same type and similar products, the NCAC has surveyed the warning statements relating to the use cooling sheets for babies. As the possibility of similar accidents recurring could not be rule out, the NCAC informed everybody of the incident to prevent its recurrence and directed consumers' attention to this issue. We also made the following requests to the cooling sheet producers:

- The industry should take adequate measures to prevent suffocation accidents caused by the cooling sheet covering babies' mouth and nose. Warning statements on the outer box as well as inner bags, for example, should refer to the possibility of suffocation if the sheet covers babies' mouth and nose. The sheet itself should be printed with a warning "Beware of the sheet sticking to the mouth or nose."

—Other topics—

The "Lifestyle Information Exchange Plaza" opened

On October 1, 2004, the NCAC opened the "Lifestyle Information Exchange Plaza" on the third floor of its Tokyo office. The Plaza is aimed at promoting information exchanges and creating networks among specified non-profit organizations (NPOs) dealing with livelihood and consumer issues and a broad range of people and organizations centering on consumer-related organizations. The Plaza is also engaged in collecting and providing information related to daily life focusing on the activities of NPOs. The NCAC has also launched on its website the "Lifestyle Information Exchange Plaza" pages, providing online database of organizations that deal with livelihood and consumer issues.



—Visitors from Foreign Countries—

- ☆The overseas study tour group for consumer protection from Korea (May 28th)
- ☆Members of the Organization of Consumer Affairs Professionals in Business in Korea (Jun 10th)
- ☆Mr. Kee Beom Kim from International Labour Office (Jul 12th)
- ☆Staffs of Fair Trade Commission of R. O. C (Jul 14th)
- ☆Ms. Choi Eun-sil from Korea Consumer Protection Board (Jul 15th)
- ☆Members of China Consumers Association (Jul 16th)
- ☆Members of Consumer Protection Commission of R. O. C (Aug 16th)
- ☆The Secretary general and staffs of the office of the consumer Protection Board in Thai Land (Aug 23rd)
- ☆Staffs of Korea Consumer Protection Board and Korea Fair Trade Commission (Sep 16th)
- ☆Professor Robert N. Mayer from the University of Utah, Family and Consumer Studies (Nov 17th)