



NCAC NEWS

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(1) Consumer Affairs Climate

- *Research study regarding legal restrictions on uninvited solicitations*

‘Uninvited solicitations’ means ‘solicitations that are carried out by business operators in a one-sided manner even though consumers express no request to receive such solicitations.’ In the Fiscal 2005, PIO-NET (Practical living Information Online-NETwork) received approximately 1.3 million consumer inquiries and complaints regarding uninvited solicitations and approximately 45% of these cases were related to the sales methods adopted in these solicitations. Similarly from the Fiscal 2000 onward, the proportion of consumer inquiries and complaints taking place in each fiscal year and relating to sales methods of these solicitations reaches approximately 4%. Furthermore, each fiscal year records over 100,000 cases relating to ‘door-to-door sales’ and over 50,000 relating to ‘telemarketing.’ The cause of these consumer issues is considered to be the so-called ‘uninvited solicitations’ that are carried out by business operators by means of door-to-door sales and telemarketing even though consumers express no wish to receive such solicitations. Consumer damages as a result of these solicitations have remained considerate. Furthermore, once consumers have concluded contracts, damages suffered by such consumers are not necessarily relieved in a sufficient manner at this moment. By taking into account these problems, legally restricting uninvited solicitations may have the effect of minimizing consumer issues regarding these solicitations.

Under these circumstances, the National Consumer Affairs Center of Japan (hereinafter NCAC) analyzed the current status of consumer consultation cases relating to uninvited solicitations and also investigated the current circumstances surrounding the development of laws against these solicitations within Japan in order to examine ideas of legally restricting uninvited solicitations from the various points of view.

1. Current status involving consumer damages as a result of uninvited solicitations

Amongst the inquiries and complaints received by the Consumer Advice and Research Dept of NCAC within the Fiscal 2005, NCAC analyzed the details of the cases relating to; door-to-door sales targeting households, door-to-door sales targeting workplace, and telemarketing (altogether 1,622 cases). As a consequence, the following problematic areas were discovered:

- consumers lives are menaced by unwanted solicitations;
- several problems take place during an uninvited solicitation such as the sales representative hiding the purpose of the sales while soliciting, the sales representative failing to provide information which would be important when determining whether or not to conclude the contract, or the sales representative not telling the truth;
- a series of solicitations take place targeting the elderly who are not able to make complaints or people with impaired judgment;
- a cooling-off system is not utilized in some cases even though it is provided for; and
- a considerate number of door-to-door sales companies have become bankrupt or disappeared.

2. Effectiveness of statutory regulations and necessity of legally restricting uninvited solicitations

NCAC compared the following legal areas in terms of the current circumstances surrounding the legal system: the area regulated by the Specified Commercial Transactions Law where a significant number of consumer complaints notably tend to take place; and the financial areas regulated by the Commodity Exchange Act and the Financial Futures Trading Law. The findings of the above comparisons are described below:

- The amount of consumer damages caused by foreign exchange marginal transactions has dramatically decreased in the area regulated by the Financial Futures Trading Law which sets forth prohibition rules concerning uninvited solicitations.
- Although the Specified Commercial Transactions Law and the Commodity Exchange Act have undergone a number of amendments, definite rules relating to an obligation to confirm the consumer's wishes before initiating a solicitation or prohibition of a resolicitation have not satisfactorily been established therein.

3. Grounds for establishing legal restrictions for uninvited solicitations and laws that set forth these restrictions

NCAC examined the grounds for establishing legal restrictions for uninvited solicitations and laws to set forth these restrictions. The results of the above examination are described below:

- Uninvited solicitations may be restricted by law due to the presence of solicitation methods that are against the public welfare. The Antimonopoly Law may regulate uninvited solicitations by defining them as 'unfair practices.'
- Legally restricting uninvited solicitations will prevent business operators of such solicitations manipulating consumers' decisions or taking actions that make consumers feel uncomfortable. It also will prevent such operators infringing upon the 'peace in personal lives' of consumers. The Consumer Contract Law may be suitable to set forth restrictions for uninvited solicitations.
- Alongside the Financial Transaction Law, it may also be effective if uninvited solicitations are restricted by the Specified Commercial Transactions Law in order to retain the appropriateness in consumer trades whereby business operators provide fair sales activities.

(2) Activities of NCAC

① Product tests

• Safety of motorized three/four-wheeled vehicles

'Motorized three/four-wheeled vehicles' means motorized wheelchairs that are used by the elderly and other people who have lower physical abilities in their body parts such as legs and hips and are operatable independently by such people. The Road Traffic Law defines the relevant motorized three/four wheeled vehicles as 'motorized wheelchairs designated for physically disabled persons.' Furthermore, users of such vehicles do not have to hold a drivers license as they are treated as pedestrians.

According to a National Police Agency survey, there is an upward trend seen in the number of accidents associated with motorized three/four wheeled vehicles operated by the elderly and also in the number of issues between these vehicles operated by the elderly and other vehicles. Furthermore, PIO-NET received approximately 40 cases of consumer inquiries and complaints in the last five years that seem to be associated with the safety of motorized three/four wheeled vehicles. Consequently, NCAC have carried out a product test on eight brands of 'motorized three/four wheeled vehicles' regarding the following points:

- compliance with the Road Traffic Law; and
- safety and usability tests (monitor tests involving 20 elderly people).

The summary of the findings of the above product test is described below:

- Some products were discovered to be unsafe as they produced a maximum speed in excess of the standard speed limit set forth in the Road Traffic Law.
- Some products had an accelerator lever that tended to cause a misoperation. These products need to contain a safety mechanism so that, unless the driver takes the seat, the vehicle will not start even though the accelerator lever is operated.
- Some products did not have an emergency stop mechanism to prevent hazards due to a misoperation of the accelerator lever. In addition, there were other products that had an emergency stop mechanism though the vehicle failed to stop depending on how the grip was held.
- Some products did not mount a brake system which is necessary when disengaging the clutch and pushing the vehicle manually. These products were particularly unsafe on ramps.
- Users of motorized three/four wheeled vehicles were difficult to be spotted by drivers of automobiles and thus were found to be in great risk.
- The mileage of the testing vehicles, beginning from when the battery was full to when the battery needed to be recharged (= when the recharge sign turned on), was approximately 8 to 18km. Furthermore, all the testing vehicles could keep running for an extra 4km or longer from when the recharge sign turned on to when the battery finally ran out.

NCAC provided the following advice for consumers by taking into account the above findings:

- Driving practice is necessary in order to operate the vehicle on streets without problems.
- If possible, the accelerator lever should be operated by one hand.
- The vehicle should be operated with care when going downhill.
- Adequate care is necessary when travelling on footpaths as you could cause an accident

and harm other people.

- Be aware that it is difficult for drivers of automobiles and other vehicles to recognize the presence of you and your vehicle.
- Make sure to check the status of the battery all the time.

Furthermore, NCAC made the following requests to the industry by taking into account the above product test findings:

- Immediate measures must be taken regarding some products that produce a maximum speed in excess of the standard speed limit set forth in the Road Traffic Law or that have a vehicle body size in excess of that set forth in the above law.
- Safety features to be installed in the vehicle need to be enhanced such as installing a mechanism so that the vehicle will not start unless the driver takes the seat.
- An emergency stop mechanism that is fail proof and a brake mechanism for when disengaging the clutch and pushing the vehicle manually need to be equipped in products.
- An improved operation system needs to be developed in order not to cause a misoperation by users.
- A poll or reflecting materials need to be equipped in products in order to improve their visibility from other people.
- It is necessary to ensure that training sessions are provided for users.

Furthermore, NCAC made the following request to governmental organizations:

- The industry needs to be given instructions to improve some products that are distributed proclaiming to be ‘motorized wheelchairs’ but produce a maximum speed in excess of the standard speed limit set forth in the Road Traffic Law or they have a vehicle body size in excess of that set forth in the above law.
(This request was made to the Traffic Planning Division, Traffic Bureau, Metropolitan Police Department, and the Motorized Wheelchair Safety Extension Society.)

② Surveys

- *A consumer complaint case whereby a manufacturer billed a consumer (the user of their product) for travel expenses after providing a checkup service of their product (although the manufacturer publicized that they would perform such a service in order to maintain the safety of the product)*

In October 2006, the Executive Director of NCAC submitted a proposal to the Special Committee for Handling Consumer Complaints* (see *Note* described below) to examine a particular consumer complaint whereby ‘a manufacturer/distributor billed the consumer for product checkup service expenses although such a company publicized the service in the newspapers urging consumers to receive it.’ The Committee examined the case afterward and provided its recommendations to NCAC in February, 2007. The details are described below:

Note: By receiving a proposal made by the Executive Director of NCAC regarding a consumer complaint case that requires a high level of legal judgment, the Special Committee for Handling Consumer Complaints provides recommendations to NCAC from fair and neutral points of view.

○ Details of the consumer complaint

The consumer spotted a newspaper advertisement stating as follows: “Our product called ‘Electric Bathroom Fan, Dryer and Heater’, designated to be installed in a unit bath, may catch fire if the terminal area of its power code received inappropriate electrical

work in the past. Please contact your construction contractor as soon as you can to receive a product checkup service for the terminal area. We advise you not to use the product until the service has been completed. If you are not sure whether or not you use the relevant product, please call our call center dedicated to this issue at the number described below.” The consumer then requested the service to maintain the safety of the product.

An electrical contractor, arranged by the builder the consumer used for the construction of his house, performed the service and confirmed that the product did not need to undergo any repair work. Nevertheless, this electrical contractor afterward billed the consumer for 5,000 yen as travel expenses. The consumer considers that such a contractor should be responsible for any expenses occurring in the checkup service since the safety of the product could not be maintained as a result of inappropriate installation work and was not the consumer’s fault.

○ Conclusions

The conclusions presented by the Special Committee for Handling Consumer Complaints as a result of its examination of the above consumer complaint case are described below:

- According to the regulations set forth in the Consumer Products Safety Law, the above manufacturer does not have an immediate obligation toward consumers under civil law to perform a product checkup service.
- At the same time, however, it is difficult to come to a conclusion that the manufacturer of the above product should be responsible for all service expenses on the grounds of the newspaper advertisement.
- Nevertheless, by taking into account the manufacturer’s accountability and corporate social responsibility (CSR) as well as the social relevance to solve this issue, it is appropriate to say that the manufacturer should bear all service expenses as a solution for this consumer complaint.

• A consumer complaint case whereby no statutory document containing information regarding a cooling-off system was provided for a consumer when concluding a lease contract of ISDN telephone equipment as a result of door-to-door sales that took place nearly five years ago

In December, 2006, the Executive Director of NCAC submitted a proposal to the Special Committee for Handling Consumer Complaints to examine a particular consumer complaint regarding ‘the possibility of implementing a cooling-off system due to a statutory document not being provided for the consumer (such a document was actually provided to the consumer though the contents of the document contain inadequacies).’ The Committee examined the case afterward and provided its recommendation to NCAC in February, 2007. The details are described below:

○ Details of the consumer complaint

The consumer purchased a computer nearly five years ago. This was just at the time when the consumer was becoming interested in using the internet and a sales representative stating that he worked for a company relating to a major telephone company visited the consumer at the barber shop he owns and runs. The sales representative said to the consumer that ISDN was suitable for using the internet though it was not available with the telephone set the consumer was using back then. The consumer was then recommended to lease the ISDN telephone equipment. The consumer concluded two contracts (one for workplace and another for home use) since he did not have a good knowledge concerning the internet and he assumed that he could not use the internet without having to lease ISDN

telephone equipment as being told so by the sales representative.

The consumer has been paying the monthly bills while sensing something was wrong. He has recently come to know that there have been a significant number of problems involving lease contracts of telephone equipment. The consumer now believes that he concluded a troublesome contract as well. He wishes to cancel the contract altogether as the lease costs are high and seeks a way to do so.

As this case involves door-to-door sales, the above door-to-door sales company has an obligation to provide a statutory document containing information regarding a cooling-off system in accordance with Article 4 and 5 set forth in the Act on Specified Commercial Transactions. Nevertheless, the document provided for the consumer in this case did not contain information regarding a cooling-off system; in other words, the consumer was practically not provided with any statutory document.

○ Conclusions

The conclusions presented by the Special Committee for Handling Consumer Complaints as a result of its examination of the above consumer complaint case are described below:

- Article 9 of the Act on Specified Commercial Transactions sets forth that a cooling-off period will not start its count if a door-to-door sales company fails to provide a consumer with a statutory document. Furthermore, the above law does not specify any regulations with which the right of cooling-off will cease if a door-to-door sales company fails to provide a consumer with a statutory document.
 - In principle, a consumer will be able to take advantage of the right of cooling-off within five years after concluding the contract.
 - Even if the five years have passed after concluding the contract, the consumer may still take advantage of the right of cooling-off if it has been determined that the business operator practically sabotages the consumer's right of cooling-off by not fulfilling their obligation to provide a statutory document to the consumer.
 - However, exercising the right of cooling-off to a notable degree that exceeds the purposes of the cooling-off system is not allowed as such an act is recognized as abusing the right.
 - If a consumer is allowed to take advantage of a cooling-off system, he or she will be exempted from the obligation of restoration in accordance with Paragraph 3, Article 9, the Act on Specified Commercial Transactions.
- *Be aware of malicious sales methods involving quasi-medical practices! (that are carried out by people who are not licensed to practice medicine though provide medical examinations and urge consumers to purchase products and/or use services)*

A case example (a quasi-medical practice run by people who did not hold a license of doctor or nurse) - The blood sample of the consumer was taken from the tip of his finger and the state of his blood was shown in the monitor for him to see. The consumer was then told that his blood was quite thick. A bracelet was then put on the consumer's wrist for fifteen minutes and another blood sample was taken again for a re-examination. The consumer was told at this time that his blood had become normal. The consumer kept wearing the bracelet for four months but could not feel any effect. In this way, there are cases whereby a quasi-medical practice operator performs simple medical examinations for a consumer and increases the consumer's concern toward his or her health. As a result, the consumer concludes the contract to purchase a product recommended by such a business operator.

Taking the blood sample and giving a diagnosis by looking at the results of the examinations that all are carried out by a person who does not hold a license of doctor or nurse are acts

that breach the Medical Practitioners Law. The sales methods adopted in these cases, whereby a person who did not hold a license of doctor or nurse increased the consumer's concern and urged the consumer to purchase the product or use the service, are equivalent to those of malicious business practices. Under the circumstances, NCAC analyzed the current status of consumer issues caused by sales methods similar to those described above and provided information gained from the above analysis to consumers in order to prevent future consumer damages.

The outline of the findings of the above analysis is described below:

- The total number of consumer consultation cases relating to 'quasi-medical practice' is 3,510 (the number of cases registered from the beginning of the Fiscal 1996 to January 31, 2007). Amongst these cases, the number of cases whereby consumers purchased products as a result of quasi-medical practices is 2,347 (66.9%), the number of cases whereby consumers received medical operations is 1,158 (33.0%) and the number of cases related to other matters is 5 (0.1%). In recent years, the proportion of cases whereby consumers purchased products has been increasing remarkably.
- The average contract money is approximately 540,000 yen and the average amount of payment is approximately 340,000 yen. These average amounts of money remain quite consistent in all categories of products and services and also in all categories of consumer consultation cases relating to quasi-medical practices.
- 'Medical equipment' (including magnetic necklaces and electric massage instruments) was the most common products purchased as a result of quasi-medical practices, accounting for 22.4% of the total.
- The average age of consumers concluded a quasi-medical practice related contract is relatively older; nevertheless, the following two products attracted younger consumers: 'cosmetic products' - the average age of consumers that purchased such products is 27.1 years old; and 'beauty products' (including beauty salon services) - 31.3 years old.

○ Advice for consumers

NCAC provided the following advice for consumers according to the above findings:

- Do not take any medical examinations at places other than hospitals and other institutions that you trust.
- Consult your family doctor in the first place if you have any concerns regarding your health.
- When receiving beauty salon services, obtain adequate explanations regarding the details and methods of medical operations. Furthermore, make sure to check with the service provider regarding any questions or concerns you have.
- Consult your nearest local consumer center as soon as you can regarding a cancellation of the contract since a cooling-off system may still be applicable even if you have already concluded the contract.