



# NCAC NEWS

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## (1) Activities of NCAC

### 1) Product tests

#### **Mobile phone malfunctions caused by exposure to water**

In the recent five years, PIO-NET (Practical living Information Online-NETwork) has learned of 1,013 cases of consumer complaints in association with mobile phone malfunctions due to exposure to water. The major complaints are: (1) a mobile phone business operator suggesting that the cause of a mobile phone malfunction was water exposure although the consumer did not use the phone in a way for it to come into contact with water and (2) the mobile phone malfunction being determined to be caused by exposure to water even though the label, attached to the mobile phone to indicate whether or not the phone has been exposed to water, had not changed color. In this manner, there are differences in claims made by consumers and business operators.

Under these circumstances, the National Consumer Affairs Center of Japan (hereinafter 'NCAC') conducted a product test by simulating the usage statuses learned from these consumer complaints. The product test findings are described below:

- Some of the non-waterproof mobile phones subject to the product test became non-usable after being repeatedly used outside whilst raining. As a result of examining the inside of these phones, there were blots found indicating that water had leaked in.
- Some of the non-waterproof mobile phones became non-usable or were temporarily unavailable to use after being used with wet hands. The pattern printed on some labels, attached to these phones to indicate whether or not the phone has been exposed to water, became blurred.
- Some of the non-waterproof mobile phones became non-usable when used in locations subject to high temperatures and high humidity or when there was a significant change to temperature and humidity. The pattern printed on some labels, attached to these phones to indicate whether or not the phone has been exposed to water, became blurred.
- Most of the non-waterproof mobile phones displayed a variety of malfunctions and became non-usable after being soaked in water even if it was only for a few seconds. The pattern printed on the label, attached to all the non-waterproof mobile phones to indicate whether or not the phone has been exposed to water, became blurred.
- None of the non-waterproof mobile phones contained any written information on the main body to

describe whether or not the product is waterproof or any precautions not to expose the product to water though their instruction manuals did contain the warning not to expose the product to water.

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

- A malfunction may take place on the label, designed to indicate whether or not the phone has been exposed to water, may display a trace of water if using the mobile phone repeatedly in a way in which it comes into contact with water on a day-to-day basis. It must be noted that, if a malfunction takes place under such a situation, you may need to bear the cost of repair or your request to have the phone repaired may be rejected.
- It is desirable to select a waterproof model when purchasing if frequently using a mobile phone under circumstances whereby it comes into contact with water.
- In the case of water exposure, remove the battery immediately and take the phone to the distributor.

Furthermore, NCAC made the following requests to the industry:

- Consumers need to be made fully aware not to use the mobile phone in ways that are prohibited by the instruction manual as a large number of consumers have used their mobile phones in such ways on a day-to-day basis.
- In a real-life situation, a mobile phone can easily be exposed to water such as being 'exposed to rain.' Products thus need to be improved so as to prevent malfunctions caused by slight water exposure that can take place on a day-to-day basis.
- Consumers should not have to fully bear the cost of repair of their mobile phone which has become faulty due to water exposure.

## 2) Surveys

### The rapidly increasing number of consumer inquiries and complaints involving 'Loco London' transactions

Consumer inquiries and complaints involving what are called 'Loco London' transactions (see 'Note' below) have become visible since the second half of the Fiscal 2006. In the Fiscal 2007, the number of these cases jumped to become 3.6 times larger than the previous fiscal year. NCAC has accordingly summarized the problematic areas of 'Loco London' transactions as follows:

Note: 'Loco London' transactions herein indicate 'business practices' to solicit consumers to purchase 'financial investment products' that involve marginal transactions carried out based on the spot transaction prices of precious metals distributed in overseas markets.

- Approximately 70% of the contracting parties are those at the age of sixty or older and there are 200 cases in which the contracting parties are those at the age of eighty or older. The average contract sum is approximately 4.12 million yen.
- In accordance with the revised Order for Enforcement of the Act on Specified Commercial Transactions (enacted on July 15, 2007), brokerage companies involving these transactions have become subject to the Specified Commercial Transactions Law. Consumer inquiries and complaints associated with these transactions have nonetheless been raised in a consistent manner.
- The problematic areas of 'Loco London' transactions are: 1) 'uninvited solicitations' have not been prohibited, 2) no restraints have been specified against business owners entering the market and 3) the mechanism of a transaction is complicated and such a transaction thus contains a high risk for general consumers.

NCAC has provided precautionary information for consumers and has requested the Commerce Division, Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry to upgrade the relevant laws promptly.

### Be aware of accidents caused by phytotoxin: Death may even result from eating noxious bulbs and leaves

PIO-NET has learned of the following consumer inquiry: 'A pet dog ate a bulb planted in the garden and

consequently died after vomiting blood. It seemed that the bulb was noxious though there was no precautionary labeling provided to warn of potential risks.' The bulb which the dog ate was called 'colchicum' (the garden plant name of 'autumn crocuses' and hereinafter 'autumn crocuses'). As a result of NCAC's investigation, the bulbs and leaves of autumn crocuses were found to contain 'colchicine' (a noxious component) and there are cases of human deaths by consuming these noxious parts. The investigation findings are described below:

- Autumn crocuses beginning to bud could be accidentally eaten as their leaves resemble those of ramsons. Not many consumers know that autumn crocuses contain a noxious component and that a person can become gravely ill if accidentally eating the noxious parts of the plant.
- Although autumn crocuses can be purchased through the Internet and general nurseries, these sales outlets do not provide precautionary labeling stating that the plant contains a noxious component. Consumers thus are not aware of the hazardous nature of the plant when purchasing.
- As consumers are not aware of the noxious component contained in the bulb of an autumn crocus, they do not provide an adequate safeguard to the bulb when planting it. This may allow animals such as a dog to dig out the bulb to eat it.

NCAC has provided precautionary information to consumers concerning the poison contained in autumn crocuses. NCAC has also requested the industry to ensure that precautionary labeling is provided in order to prevent consumers from mishandling the noxious bulb and sapling and to create distribution and sales guidelines regarding the plant.



Photo 1. The bulb of an autumn crocus



Photo 2. Full appearance of a ramson (leaves, bulb and root)



Photo 3. Growth status of an autumn crocus



Photo 4. Growth status of a ramson

(Source: The Tokyo Metropolitan Institute of Public Health)

**Accidents caused by 'jump type' and 'automatic open/close type' folding umbrellas: Some cases with severe injuries have been seen**

Folding umbrellas include those that are manually opened and closed by using hands ( 'manual type' ) and those that are automatically opened by pushing a button ( 'jump type' ). Some jump type folding umbrellas can automatically be folded when being closed ( 'automatic open/close type' ) and these products are considered to be highly convenient. PIO-NET has however learned of a number of accidents including the following: 'The haft (the edge to be held by a hand) suddenly sprung out when folding a jump type folding umbrella to put away and

the consumer's forehead was consequently cut,' and 'When closing and folding an automatic open/close type folding umbrella and then shifting it the other hand to put it away in the umbrella sack, the haft (the edge to be held by a hand) suddenly stretched out directly hitting the consumer's left eye. As a result of this accident, the consumer was diagnosed with 'pupillary dilation' in which the pupil stays enlarged.'

Under these circumstances, NCAC has provided warnings to consumers and has also made the following three requests to the industry:

- The safety of both jump type and automatic open/close type folding umbrellas need to be reviewed. Distributors also need to work out ways to create easy-to-understand precautionary labeling in cooperation with manufacturers to describe the usage instructions.
- The safety regulations set forth by the Japan Umbrella Promotion Association (JUPA), which is designed to specify the quality standards for umbrellas, must contain safety regulations applicable to jump type and automatic open/close type folding umbrellas.
- Work out ways to create easy-to-understand precautionary labeling in cooperation with manufacturers to describe the usage instructions.

### **Death of pet birds as a result of a microwave oven being run when empty**

PIO-NET has learned of the following consumer complaint: 'Two pet birds died after using a newly purchased microwave oven.' Although it was difficult to identify the cause of death of the birds, some harmful gases were suspected to have leaked out when the microwave oven was run empty or when it was used for the first time according to the usage status.

(A large number of manufacturers recommend consumers through the instruction manual to run the product empty when using it for the first time. This is designed to burn off the oil attached inside and to remove odors.)

The following was discovered after NCAC performed interviews with a number of major manufacturers: (1) some manufacturers do not require consumers to run the product empty as these manufacturers provide their product with appropriate measures, (2) although some manufacturers run the product empty at their factory before shipment, they require consumers to run the product empty again after the purchase and (3) some manufacturers require consumers to run the product empty after the purchase as these manufacturers do not do so at their factory before shipment. In this manner, there are large differences in manufacturers' attitudes.

NCAC considers that manufacturers that require consumers to run their product empty after the purchase are causing issues as some harmful gases were suspected to have leaked out when the product was run empty or was used for the first time in the above particular case. NCAC has accordingly requested the relevant manufacturer involved in the above case to investigate the cause of death of the birds and look into the likelihood that its product may have adverse effects on humans; especially infants. NCAC has also requested the industry to ensure that these products are shipped only after being provided with appropriate measures in order to prevent the occurrence of similar problems and to hold back the expansion of the existing problem.

### **Problems caused by free sites and matchmaking sites**

There have been a notable number of consumer inquiries and complaints since last year involving website registration. These consumers were tricked by website administrators using a clever marketing ploy suggesting that they would be able to earn money or meet or date with someone if registering with them and, as a consequence, these consumers were unjustly billed.

Regarding user's fees required by matchmaking site administrators, PIO-NET learned of approximately 135,000 consumer inquiries and complaints which were handled by nation-wide local consumer centers within the four years from the Fiscal 2004 to 2007. Major inquiries and complaints are described below:

(1) Registered with a matchmaking site unwittingly and required to pay the user's fee

[Instances 1] After having registered with a free lottery site, an email was sent to the consumer's mobile phone stating that the consumer had won the fourth-place prize of 4 million yen. The consumer was asked

to register with a matchmaking site in order to receive the prize but did not hear from the administrator afterwards. Although the consumer repeatedly sent emails to the administrator, the prize was never transferred.

[Instances 2] After having registered with a free fortune-telling site, a number of emails started to be sent from a matchmaking site administrator. Out of curiosity, the consumer used this matchmaking site as it offered 'no point fees for female users.' A man, whom the consumer became close to through the site, said that he would 'pay for the relevant point fees when meeting.' The consumer thus maintained the email correspondence with him after the point fees kicked in. The man, however, constantly called off the meeting just moments before the time agreed to see each other. The consumer hence became suspicious that he was a 'decoy.'

## (2) Secondary billing to former users of a matchmaking site

[Instances 3] A debt-collection company billed the consumer for 30,000 yen which was claimed to be the user's fees of a matchmaking site of which the consumer used to be a member. The consumer had already paid the necessary user's fees and cancelled the membership with some points still remaining. The consumer had deleted all the emails forwarded by the matchmaking site.

[Instances 4] An agency of a matchmaking site of which the consumer used to be a member billed the consumer for server rental fees claiming that the consumer had not used the site of concern for a certain period of time. The agency stated that, although the site of concern is completely free of charge to use, the consumer was automatically registered with a pay site when registering with the matchmaking site. It was claimed that this pay site charges a user for server rental fees if the user has not used the site for 30 days. The consumer looked at the term of use but discovered no regulations specifying such matters.

NCAC has accordingly provided the following precautions to consumers to prevent them from responding to one-sided billing for user's fees as required.

1. Do not access free sites without careful consideration and do not provide any personal information carelessly.
2. Do not respond to any unjustified billing.
3. Carry out the following when receiving an email from a matchmaking site administrator:
  - (1) Do not contact such an administrator asking for payment and do not provide any personal information such as your name, address and place of work.
  - (2) If receiving persistent billing, change the email setting to reject a specified domain. Change your email address where necessary.
  - (3) Retain all the emails forwarded as evidence.
  - (4) Provide information of malicious advertising emails to the Anti-spam Consultation Center (run by the Japan Data Communications Association).
  - (5) Consult with a local consumer center when you feel alarmed or troubled.

## (2) Others

Consumer complaint: A conversation between a customer service operator and the consumer was recorded without warning. The consumer accordingly requested the operator to delete the recorded conversation though the operator declined her request (recommendations from the Special Committee for Handling Consumer Complaints which is established within NCAC)

NCAC contains the Special Committee for Handling Consumer Complaints (see 'Note' below) in order to handle consumer complaints in an appropriate and effective manner. On November 12, 2007, the Executive Director of NCAC requested the above committee to look into the following matter: 'application of the Personal Information Protection Law in the case of a business owner having recorded a conversation between its customer service operator and a customer without providing the customer with warning and a solution to settle a dispute derived

from such an incidence.' The committee established a subcommittee to look into the above matter and organized its recommendations (perspectives to handle the relevant complaint) on March 25, 2008. The details of the complaint and the committee's recommendations 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 complaint

The consumer called a manufacturer's customer center in order to confirm the warranty period. Before speaking to an operator, she came to know that the conversation between an operator and herself would be recorded after listening to the voice message stating, "This call will be recorded." When an operator returned to the consumer later on, there was no voice message in advance stating, "This call will be recorded." After the conversation was finished, the operator told her, "This call has been recorded." In response, the consumer immediately made a complaint and asked that the recorded conversation be deleted. The operator nonetheless declined her request stating, "The deletion is not possible." The consumer put the phone down though she was dissatisfied. She then called the customer center again to request the deletion and was told as follows: "We can delete the recorded conversation but you need to provide your identification such as your driver's license." In this manner, a condition was imposed on the consumer to delete the conversation.

The consumer speculates as to whether or not the Personal Information Protection Law applies to this case whereby no warning was provided to make the consumer aware of the fact that the conversation was going to be recorded. She also wonders whether or not the manufacturer is obliged to delete the recorded conversation.

The consumer is dissatisfied that she has been required to provide her personal information to delete the recorded conversation and that a consumer has no option to 'have the conversation not be recorded.' She considers that this problematic as a consumer cannot even make an inquiry if he or she does not wish to have the conversation recorded. (Salaried female worker in her 40s)

#### ○ Conclusion

After examining the relevant complaint and problematic areas, the committee reached the following conclusion:

In accordance with the Personal Information Protection Law, a business owner recording a conversation between its customer service operator and a customer does not necessarily become subject to Article 17 (appropriate acquisition) or it does not directly breach Article 18 (notification of the purpose of use on acquisition).

Recording a conversation without providing warning is, however, likely to be deemed as illegal depending upon individual circumstances as it may impinge upon the customer's personal rights. It may also create a sense of mistrust amongst customers as no warning was provided. In order to maintain its customers' trust, it is desirable that a business owner complies with Article 18, Paragraph 2 stating as follows: "...if Personal Information is directly acquired from the Person in writing (contract, other document, web page, etc.), the Entity must clearly indicate the Purpose of Use in advance."

In the event of a customer asking the business owner to disclose the recorded conversation data, the business owner has the duty of disclosure if such data is individual data held. Ways to disclose such data may be copying the recorded conversation.