

## **“Anti-Counterfeiting Measures”**

### **Chapter 2. Anti-Counterfeiting Measures in Japan**

#### **Course of Civil Action**

(Sakura)

This chart shows what happens after you submit a petition to the court. Since this is a civil action, a settlement may be reached during the trial, and this is sometimes advised. Settlements are possible at any point up until just before the conclusion of the trial. A record of settlement has the same binding effect as a court judgment.

(Eddy)

Is that so?

(Eddy)

What kind of claims does a plaintiff make?

(Sakura)

The plaintiff should assert their grounds and the amount of their claim, and request an injunction and compensation, as well as the destruction of the counterfeits.

(Narrator)

The grounds for the claim mean specifying the plaintiff’s trademark right, details of the defendant’s infringing acts and the amount of losses.

(Narrator)

The defendant counters these claims with a written reply arguing that the plaintiff’s assertions are false. They might argue that their actions do not constitute an infringement, or that they caused no damage to the plaintiff.

(Narrator)

Why might the assertions of a trademark right holder be inapplicable? The defendant could argue that there is no infringement of rights since, for example, the plaintiff does not own a valid right, there is no similarity with the plaintiff’s trademark or product, or the defendant has a legitimate right to use.

(Narrator)

It is very difficult to establish the exact value of the damage caused. In Japan rules for estimating damages are laid down in the Trademark, Patent and other relevant laws and the amount can be

calculated based on these. The plaintiff can also request the defendant to submit accounts and documentation needed to calculate damages. At the conclusion of the trial, if the parties are not satisfied with the judgment, they can appeal to a higher court.