

“Anti-Counterfeiting Measures”

Chapter 2. Anti-Counterfeiting Measures in Japan

Filing a Claim against an Internet Site

(Eddy)

You explained about sales of counterfeit goods over the Internet in Part One, but when counterfeits are found on the Internet does the provider also have liability?

(Sakura)

Yes, amendments to the laws have defined provider liabilities.

(Narrator)

When counterfeits are spotted being sold by Internet auction, the most important thing is to take action to get the vendor to stop. The problem is that individual claims against vendors are not very effective. That’s why the law has been amended to hold the auction site operator or provider responsible for allowing counterfeits to be auctioned. The idea behind this is to encourage the legal operation of networks. In Japan, the Provider Liability Limitation Law takes both sides into account in order to prevent providers and others from suffering excessive liability.

(Narrator)

The Provider Liability Limitation Law specifies the limits of liability for damages of providers and others, and the right to request disclosure of identification information for vendors.

(Narrator)

For example, when a vendor displays counterfeit goods on a provider’s site with intent to sell, if the provider knows that the goods infringe on another person’s right, then damages will apply. If there is an obvious infringement and the right holder needs information about the vendor in order to claim damages, then the provider must disclose the necessary information. Because of this law, the provider is now urged to deal with this matter voluntarily.

(Eddy)

The law urges the provider to act voluntarily, but doesn’t this place a heavier liability on the provider?

(Sakura)

That’s not always the case. The law states that if the provider has no way of knowing or recognizing that the goods displayed on their sight are infringing, then there is no liability.

(Sakura)

Furthermore, since the law recognizes the provider's right to delete information on infringing goods from their site and clearly stipulates that the provider is allowed to disclose information on the vendor, the provider no longer needs to worry about being caught between the vendor and right holder.

(Eddy)

Does the provider have any liability toward the IP right holder?

(Sakura)

There have been cases in the past concerning the liability of an operator of a web site that sold counterfeit goods.

(Narrator)

One past decision originally ruled that the operator of a mall was not the infringing entity, but a later decision ruled that even the operator of a shopping mall that offered goods for a vendor infringing a trademark right could in some cases also be held to be infringing the trademark right. In other words, there has also been a decision that if a vendor is deemed to be infringing a trademark right, the web site operator is also liable unless they delete the infringing materials from that web site within a reasonable time.

(Narrator)

At present in Japan two organizations, the Council for Intellectual Property Protection on the Internet and the Provider Liability Limitation Act Guidelines Review Council, form the basis for effective ongoing cooperation between right holders and providers to prevent the distribution of IPR infringing goods over the Internet.

(Narrator)

In practice, it is proving effective when right holders supply providers with information and materials about infringing products and request that providers stop offering the infringing content, and providers accept this request in good faith and delete the pages related to the infringing products.