Unfair Competition Prevention Act (UCPA) in Japan

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1. Introduce myself
Shinya Suzuki

- Working for OKI Data corporation, printing manufacturing company, as IP stuff.
- Studied abroad at George Washington University Law school from 2013 to 2014.
- Back to Japan last month.
2. What is Unfair Competition Prevention Act (UCPA)?

[Purpose of this chapter]
• Learn the object of UCPA
• Learn the difference between UCPA and other IP rights
• Learn the types of “unfair competition”
Purpose of UCPA

- The purpose of this Act is, in order to ensure fair competition among business operators and the proper implementation of international agreements related thereto, to provide measures for the prevention of unfair competition and compensation for damages caused by unfair competition and thereby contribute to the sound development of the national economy. (Article 1)

Remedy (Damages, Injunction, Criminal punishment)

- Ensuring fair competition among business operators
- The proper implementation of international agreements related thereto
- The sound development of the national economy
Regulating “Unfair Competition”

- UCPA regulates the act which falls within “Unfair Competition” defined in Article 2.

- Damages, injunction, or criminal sanction would be applied if the act of third party falls within “Unfair Competition”
Do you know the case?

Using other’s well known or famous indication of business

Imitating other company’s products
Do you know the case?

False Advertising

Circumventing Copy Protection

Trade Secret Violation
Questions

- If you are the party in above cases, how do you protect your right?
- IP rights such as Patent, Design, and Trademark?
- If you do not register such IP rights.
UCPA’s Relationship with other IP rights

- Different from other IP laws UCPA does not grant rights.

**No need to file something to Patent office.**

- To get remedy under UCPA, some requirements are needed.
Types of “Unfair Competition” (Article 2)

① Acts causing confusion (i)
② Unjustifiable use of a famous indication as one’s own (ii)
③ Imitation of the configuration of goods (iii)
④ Unfair acts related to trade secrets (iv) to (ix)
⑤ Acts invalidating copy/access control technology (x), (xi)
⑥ Acts of Infringing Domain Names (xii)
⑦ Acts causing misleading (xiii)
⑧ Acts injurious to business reputations (xiv)
⑨ Unjustifiable use of a trademark by an agent, etc. (xv)
1. “indication of goods, etc
2. the “indication of goods” are well known among consumers
3. Creation of confusion with another person’s goods or business

Third party used a trade name “Walkman Ltd” which is identical mark of “WALKMAN”, famous products by SONY. The Court in Japan ordered injunction for using the trade name.
② Unjustifiable use of a famous indication as one’s own (Art 2 (1) (ii))

1. “indication of goods, etc
2. the “indication of goods” are famous
   - “famous” means well known nationwide.
   - “famous” > “well known”
3. No need to cause creation of confusion with another person’s goods or business

The Court grants injunction against some companies including credit company, construction company and investment company, those are no relations with Mitsubishi group, for using “Mitsubishi” mark.
③ Imitation of the configuration of goods (Art 2 (1) (iii))

1. imitating the form of another person's goods
2. assignment, lease or display such imitating products.
3. It does not matter whether the imitated products are famous or well-known.

- Very famous game products called “Tamagotchi” made by Japanese companies.
- After releasing the products, a lot of counterfeited products are sold everywhere.
- JP company filed a litigation under UCPA under Article 2 (iii)
④ Unfair acts related to trade secrets

(Art 2 (1) (iv) to (ix) and Article 2 (4))

1. acquisition of a trade secret by theft, fraud, duress or any other wrongful method.

- What is the trade secret?
  (1) Confidentiality – managed secretly
  (2) Useful
  (3) No-public

(A list of customers for men’s wig (katsura))

An employee who works for men’s wig selling company left his company. At that time he copied a list of customers without authorization and he started his own men’s wig company based on the list of customers.
As Business Perspective

- Patent right or Trade Secret.
- Patent: 20 years
- Trade Secret: no limitation if it does not become public.
⑤ Acts invalidating copy/access control technology (Art 2 (1) (x),(xi))

1. The act of assigning, delivering, importing, etc.
2. Any device having the function of circumventing technological restriction measures used in business.

- **Technological restriction measures** means the technology which prevents unauthorized coping or viewing for contents such as music, movies, pictures or games.
Other Unfair Competition

⑥ Acts of Infringing Domain Names (Art 2 (1) (xii))
1. acquisition or holding of a right to use a domain name
2. for the purpose of acquiring an illicit gain or causing injury to another person;

⑦ Acts causing misleading (Art 2 (1) (xiii))
1. indication of information on goods or services
2. in a manner that is likely to mislead the public as to the place of origin, quality, content, manufacturing method, etc.

⑧ Acts injurious to business reputations (Art 2 (1) (xiv))
1. A falsehood that is injurious to the business reputation of a competitor
2. Announcement or dissemination of a falsehood
Summary of 1\textsuperscript{st} chapter

- UCPA is not laws which grant rights to parties. It just regulates “unfair competition”,
- UCPA often covers the action of third parties other IP laws cannot cover.
- Practically speaking, it is important to consider multi-protection measure for our products or services.
3. UCPA and digital contents

[Purpose of this chapter]
• Learn the development of digital contents
• Learn how IP rights protect digital contents
• Learn the legal issues regarding digital contents
Developing digital contents
Background

- A lot of contents such as music, video pictures and books are become digitalized.
- Such digital contents are provided to customers via online, satellite broadcasting, or packaged media.
How to access digital contents?

- Free or Paid contents/ buy packages or buy contents via downloading or satellite broadcasting.
- In the online contents, a license to access digital contents is granted if you pay money.
- How to regulate your access to digital contents?
Protecting Copy or Access protection technology

Cited at: www.manifest-tech.com
Issues regarding digital contents

Illegal copy or access

Developing technology to protect Illegal copy or access

Developing circumventing such copy or access protection technology
How IP law protects digital contents

Digital Contents

Copy Right Law

Patent Law

Design/Trademark

Copy/Access control technology

Patent Law, etc

But, if third party develops the devices which circumvent such copy/access control technology, how digital contents should be protected?
Problems of circumventing technological protection measure (TPM)

- The device or program which enable people to circumvent access/copy control technology are provided in the market.
- The problem called “Digital Shrink” will happen if illegal contents become pervasive.
- “Digital Shrink” means the market shrink phenomenon accompanying digitalized market.
- To prevent digital shrink, a lot of costs are needed including the cost for eradicating illegal contents and the cost for developing technological protection measure.
Previous Japanese UCPA: Acts invalidating copy/access control technology (Art 2 (1) (x),(xi))

1. The act of assigning, delivering, importing, etc.
2. Any device having the "Sole" function of circumventing technological restriction measures used in business.

- Technological restriction measures means the technology which prevents unauthorized coping or viewing for contents such as music, movies, pictures or games.
What is “sole” purpose?

- Literally, “Sole” means “there is no other ways”, “only”

- Previous UCPA cannot regulate the circumvention devices if they have other function except for circumventing technological restriction measures.

![Circumventing device](image)

- Illegal copy
- Other function
4. Case Study “Magic Computer Case”
(Device for circumventing technological restriction measures)

[Purpose of this chapter]
• Learn the specific case regarding unfair competition.
• Learn how the language of UCPA is interpreted
• Learn how Japanese Government and Courts handled the problems regarding digital contents.
History of Magic Computer

- Magic Computer is the device for circumventing access control.
- The famous magic computer is the device called “R4” which is available for Nintendo DS. The price is about 45$ (¥5,000)
- Magic Computer which is available for Nintendo DS is used worldwide. Nintendo files a litigation worldwide.
Damage for Game industry caused by Magic Computer (Estimate)

- The damage is estimated at least 9 billion dollars in the Japanese market and 38 billion dollars worldwide.
  - “investigation for downloading illegal copied game soft” by University of Tokyo
- This investigation does not include illegal download by using file sharing soft. Thus, the damage would be multiplied.
A situation in the world

- The court judged that “magic computer” is illegal in Japan, Italy, England, Germany, Australia, Belgium and the Netherlands.

- On the other hand, the court in Spain and France discussed about the case of “legal using” and dismissed Nintendo. But, the judgement was later overruled.
How to use Magic Computer?

- Inserting R4 to Nintendo DS
- Making self-made soft
- Inserting downloaded SD to Magic Computer
- Copy
- Public transmission
- Self-made Soft
- Illegal Soft
- Download

User

Inserting
downloaded SD
To Magic Computer
Comparison of shape between authentic soft and Magic Computer

They have almost same shape and they can insert the slot of Nintendo DS.
How to Use Magic Computer

Self-made soft → Illegal soft → Micro-SD socket → Magic Computer → Nintendo DS
How to Use Magic Computer

Magic Computer can generate same control signal which is same as authentic software. Thus, it enables user to activate games saved in the micro-SD in Nintendo DS.
How to get self-made software

Self-made software is often provided in the open platform on the Internet by paid or free.
Method to get illegal copied software

1. To download illegal copied software in some website.
2. To purchase packaged illegal copied software in the game shops.
3. The game shops download and provide illegal copied software as service
4. To get illegal copied software by getting media (CD/DVD) attached to game magazine.
5. To download illegal copied software via peer to peer technology.
   - “investigation for downloading illegal copied game soft”
     by University of Tokyo
Download site for Magic Computer Software

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Magic Computer is the device, What for?

- The device which activates illegal game soft?
- The device which activates self-made game soft?

★ Magic Computer can be used legally and illegally

Is the Magic Computer device having the “Sole” function of circumventing technological restriction measures used in business?
Japanese Case
Nintendo vs Importers: [Magic Computer]

Fact:
(1) Importers import and sell Magic Computer
(2) Customer uses Magic computer to play Nintendo DS
(3) Nintendo asserted Importers under UCPA
Nintendo Case

Issues: the devices falls within “sole” function?

- importers are selling products whose main purpose is enabling illegal copy games.
- R4 (Magic Computer) falls within “sole” function.

Importers

- The devices (R4) have the economic and commercial function which enable self-made software.
Nintendo Case

Judgement: **Nintendo won**

- The Court judged that though Importers’ products have function enabling self-made software, it does not say that their products have incidentally function to circumvent technological protection measure.
- The court interpreted that the main purpose of Magic Computer is enabling illegal copy which falls within unfair competition.
- Nintendo’s assertion to stop selling magic computer was granted.
After Nintendo Case: Strengthening regulation

Amendment of Acts invalidating copy/access control technology (Art 2 (1) (x),(xi))

- Added that if the device have function other than access control circumvention, the device would be sanctioned if the device is used substantially to circumvent access control (Not “Sole”)

Enlarge the products which fall within unfair competition in addition to “sole” products
Finally

- UCPA is a law to promote fair competition for business operators in order to contribute to the development of our country by regulating unfair competition.
- Laws and it’s interpretation would be changed as the technology develops.
- It is important to consider how to protect our creative ideas, products, services from the multiple-perspective.
Thank you very much!!

Hope you spend wonderful time in Japan!