

TOPIC

1. Issues on How Framework of Regulating Trades of Goods Constituting an Infringement of Intellectual Property Rights Should Be Arranged Is Now Announced
2. Imports of Imitation Goods by Individuals Will Be Restricted
3. Japan Law Firms Are Now Increasing The Number of Their Employment of Chinese Attorneys



Issues on How Framework of Regulating Trades of Goods Constituting an Infringement of Intellectual Property Rights Should Be Arranged Is Now Announced

Ministry of Economy, Trade and Industry (METI) announced issues on "Framework of regulating trades of goods constituting an infringement of intellectual property rights".

In the announcement, the following four issues were presented with regards to "(I) Improving gateway defense against incoming goods constituting an infringement of intellectual property rights":

Issue 1. How the basic way of institutional reformation should be settled (the institutional reformation is to be carried out by modifying the current institution or by establishing a new institution);

Issue 2. How the framework should be arranged in order to make expert judgment to infringement (the judgment is to be made by the courts or by advisory boards);

Issue 3. Possibility of implementing, for example provisional injunction by the courts in the framework of the administrative proceedings (problems may arise in relation to the principle of separation of three powers, or to the principle of protection of a third-party proceedings); and

Issue 4. How role-sharing between (i) a new system and (ii) the system of proceeding a motion in accordance with the Customs Tariff Law should be arranged (if a new system is to be established, the role is to be separated or to be shared).

Further, the following two issues were presented with regards to "(II) Imports of imitation goods and pirated goods by a non-business person (imports by individuals)":

Issue 5. What should be targeted by the import restriction (total prohibition, or prevention of disguised imports); and

Issue 6. Possible alternatives besides the approach by the Foreign Exchange and Foreign Trade Control Law (enlargement of Intellectual Property Laws, establishment of criminal penalty in a new law, or administrative confiscation).

Imports of Imitation Goods by Individuals Will Be Restricted

Ministry of Economy, Trade and Industry (METI) decided to intensify restriction over imports by individuals, in order to regulate an unscrupulous importer who disguises as an individual and imports an enormous amount of imitation goods, such as imitations of brandname goods, or pirated CDs/DVDs.

The METI is planning to make amendments in 2007 to the Foreign Exchange and Foreign Trade Control Law bulletin, in order to include goods constituting an infringement of intellectual property rights, such as imitation goods and pirated goods, in the list of import items that are required to be registered in advance with the METI. The METI is also planning to regulate (i) the number of importing and (ii) the number of import goods that an individual is allowed within a year.

Under the current Intellectual Property Laws, such as the Trademark Law and the Design Law, importing imitation goods by an individual for the purpose of personal use is not prohibited. Therefore, even when a Custom officer finds an unscrupulous importer who disguises as an individual and imports an enormous amount of imitations of brandname goods, the imitation goods cannot be confiscated if the importer excuses that the goods are not for commercial use. After the Foreign Exchange and Foreign Trade Control Law bulletin is amended, an importer disguising as an individual will not be able to import an enormous amount of imitation goods.

Regulation of imitation goods and pirated goods has become an important issue in relation to the Intellectual Property Protection Policy of the government. This is because an enormous amount of imitation goods and pirated goods have been widely distributed in the overseas markets, and Japanese manufacturing companies and importing companies in all fields have become victims. Imitation goods have continuously been imported by unscrupulous importers who disguise as individuals and bring in a few numbers of imitations of brandname goods, such as bags and watches, from Asian countries. This has caused serious damages to the Japanese companies.



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In, for example, the "Intellectual Property Strategic Plan 2006", which will be established in June, the Japanese government is planning to intensify (i) protection of Japanese products against imitation goods thereof distributed in the overseas markets as well as (ii) domestic regulations on importing imitation goods, such as imitations of overseas brandname goods. In order to prevent, for example, distribution of imitations of brandname goods through the auctions held on the Internet, the METI has already mandated a person selling an enormous amount of goods to register. The METI is further planning to make amendments in 2007 to the Trademark Law or the Design Law, in order to intensify the penalties to violators of the laws.

Japan Law Firms Are Now Increasing The Number of Their Employment of Chinese Attorneys

Japanese big law firms are now starting employing Chinese legal professionals, in order to provide better supports to Japanese companies in the field of infringement of intellectual property rights by Chinese companies. The law firms start enhancing the alliance with Chinese big law firms as well as increasing the number of their employment of Chinese attorneys. Such movement is made in order to learn know-how regarding Chinese-inherent law practice and judicial customs and utilize them in establishing strategies for litigation against Chinese companies.



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Please Contact us if You have any Comments or Require any Information.

Please acknowledge that the purpose of our column is to provide general information on the field of intellectual property, and that the description here does not represent our legal opinion on a specific theme.

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