

Provider Liability Limitation Act
Guidelines Relating to Trademark Right

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Provider Liability Limitation Act Guidelines Review Council

Provider Liability Limitation Act Guidelines Relating to Trademark Right

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I Introduction – Purpose of the Guidelines

1 Objectives of the Guidelines

The Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (Act No. 137 of 2001; hereinafter referred to as "Provider Liability Limitation Act" or simply "Act") that came into effect in May 2002 provides for cases, etc., where liability for damages of the sender is limited in cases where the provider, etc., takes measures such as deletion with respect to information distributed through the Internet that infringes the rights of another, and through this, an environment was prepared that makes it possible for providers, etc., to make an appropriate response based on their own determination in cases where information that infringes the rights of

another is distributed. In turn, this council as well has formulated and endeavored to make public Guidelines Relating to Defamation and Privacy and Guidelines relating to Copyright with the objective of promoting appropriate and proper response by providers, etc., to right-infringing information distributed through the Internet and promoting smooth and sound use of the Internet.

In recent years, cases have been increasing in which right holders and right-holder organizations, alleging that display information published on an online auction (referring to conducting mediation of persons attempting to buy or sell goods by auction methods through the Internet; hereinafter the same shall apply) infringes trademark right, etc., make notice to the online auction business operator (referring to the person who administers or operates an online auction; hereinafter the same shall apply) to delete the information. In light of this context, the "Intellectual Property Strategic Program 2004" decided in May 2004 by the government's Intellectual Property Strategy Headquarters also specifies conducting broad review from the standpoint of protecting intellectual property and the interests of consumers themselves with respect to facilitating deletion, etc., by managers of Internet auction sites, etc., from the site of displayed articles that infringe (omitted) rights.

In light of these circumstances, in cases where trademark right and exclusive right to use (hereinafter in this chapter referred to simply as "trademark right, etc.") have been infringed by distribution of information pertaining to an article displayed in an online auction or other information on a web page, these guidelines shall take it as their objectives to make clear, within the possible scope at the present stage, cases in which taking transmission prevention measures such as prompt deletion is possible even when not the case that the online auction business operator, etc., contacted the sender and no objection was received after seven days (article 3 paragraph (2) item (ii) of the Act), and along with this, to clarify the standard of behavior of the right holder and the online auction business operator, etc., in responding to a particular case, by making possible prompt and appropriate response when formal determination is made as to whether the guidelines have been followed, instead of the online auction business operator, etc., making a determination according

to particular circumstances, and to promote prompt and appropriate response by the online auction business operator, etc., with respect to distribution of information via a specified telecommunications service provider (referring to the "specified telecommunications service provider" of article 2 item (i) of the Act; the same shall apply hereinafter) that infringes trademark right, and thereby promote smooth and sound use of the Internet. These guidelines shall cover the specified telecommunications service providers referred to in article 2 item (iii) of the Act, but due to the nature of the information covered here, because chiefly persons, etc., who administer or operate online auction business operators or virtual shopping malls and who fall under the specified telecommunications service providers are what is in mind, specified telecommunications service providers are referred to as online auction business operators, etc.

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N. B. : Trademarks are said to have the three functions of 1) source-indication function, 2) quality-assurance function, and 3) advertisement and publicity function, and it is necessary to keep in mind that for trademark right, which makes protection of the interests of consumers and maintenance of trust in the course of business its objectives, the nature of the right differs from copyright, which covers protection of works that have creatively expressed thought or emotion. (For example, whereas in cases where a file in which a work has been copied verbatim has been uploaded to the Internet, the right of public transmission and right to make transmittable are infringed by merely that, trademark right cannot be said to be infringed immediately by having displayed a so-called counterfeit product in an Internet auction.)

2 Concerning Infringement of Trademark Right by Distribution of Information

(a) The act wherein a person who produces, certifies, or assigns (hereinafter referred to as "assignment, etc.") goods in the course of trade "uses" a mark identical or similar to a registered trademark with respect to specified goods or goods similar thereto falls under

infringement of trademark right, and

(b) according to the revised Trademark Act of 2002 (in effect from 1 September 2002), the act of affixing a trademark to information whose content comprises advertisement materials, etc., relating to goods or services and making this available by electromagnetic means, that is to say, the act of advertising, etc., relating to goods or services over a network, is clarified as constituting use of a trademark (article 2 paragraph (3) item (viii) of the Trademark Act),

and therefore, for the purpose of interpretation of the Trademark Act,

(c) in selling counterfeit branded goods (referring to goods identical or similar to specified goods or goods similar thereto pertaining to trademark registration of a trademark right holder [including persons which have received permission therefor; hereinafter in this chapter the same shall apply], which are goods to which is affixed a trademark identical or similar to said trademark without the permission of the trademark right holder; hereinafter the same shall apply) using the Internet, such as by display, etc., in an Internet auction, the act of publishing on a web page photographs or images, etc. (hereinafter referred to simply as "photographs") of goods to which is affixed a mark identical or similar to a registered trademark is believed to fall under "use" of a mark provided for in article 2 paragraph (3) item (ii) of the Trademark Act as an act of displaying, for the purpose of assignment, goods or packages of goods to which a mark is affixed.

Additionally,

(d) in conducting advertisement relating to counterfeit brand goods, etc., on an auction site or other web page, the act of displaying a trademark identical or similar to a registered trademark advertisement material, etc., relating to goods is believed to fall under "use" of a trademark as provided for in article 2 paragraph (3) item (viii) of the Trademark Act as an act of distributing advertisement materials, etc., relating to goods to which a mark is affixed, or to provide information on such content, to which a mark is affixed by an electromagnetic device. Accordingly, it is believed that such acts, in cases where committed by persons who assign, etc., goods in the course of trade (cases of repeated or continuous display, cases of display in large volume, etc.), fall under use of trademark, and infringement of trademark right is established.

Predicated on this interpretation,

- 1) [the act of 3) below being committed] by a person who assigns, etc., goods in the course of trade,
- 2) with respect to specified goods or goods similar thereto pertaining to trademark registration of a trademark right holder,

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3) the act of publishing on a web page photographs of goods to which is affixed a mark identical or similar to a registered trademark, or the act of displaying on a web page a trademark (affixed to information whose content comprises advertisement materials, etc.) identical or similar to a registered trademark is believed to have infringed trademark right. The "infringement of [...] rights through distribution of information" as used in the Provider Liability Limitation Act signifies cases where a relationship of adequate causation exists between "distribution of information" and "right infringement," and cases whether it is determined that a relationship of adequate causation exists in a particular case can be decided by general laws such as the Civil Code, but for 3), it is believed that "distribution of information" directly causes "right infringement."

N. B. : For the foregoing opinion, refer to "Collection of Cases Relating to Private Import and Internet Transactions of Counterfeit Goods" (February 2005, Japan Patent Office).

http://www.jpo.go.jp/torikumi/mohouhin/mohouhin2/jirei/pdf/inet_trans_jirei/001.pdf

N. B. : At the present point in time, in displaying goods in an Internet auction, although no judicial precedent exists as to whether cases such as where a brand name has been entered as the display title or the name of the goods constitute affixing a trademark to information whose content comprises advertisement materials, etc., relating to goods, it is conceivable that some cases fall under "use" in article 2 paragraph (3) item (viii) of the Trademark Act.

3 Status of the Guidelines

Whether rights were actually infringed by the distribution of information, and as a result, whether the online auction business operator, etc., incurs

liability by mistakenly deleting information or allowing it to stand, will ultimately be decided in the court. Consequently, in individual cases, even when response conforming to drafted guidelines has been conducted, no determination based solely thereon is made even by the court that a "reasonable ground" in article 3 of the Act exists, but in cases where the content of guidelines and the procedure of their drafting have grounds securing their reliability, and the trademark right holder, etc., and online auction business operator, etc., respond appropriately in keeping with the high-reliability guidelines, it is expected that the "reasonable ground" of article 3 will then be determined even by a court to exist, and the online auction business operator, etc., will be deemed to incur no liability. From such a standpoint, these guidelines do not just simply describe notification procedures and matters ancillary thereto, but are intended to describe the way of thinking behind them as well.

Further, similarly to the way of thinking of the Provider Liability Limitation Act, these guidelines clarify, within the possible scope, the responses which online auction business operators, etc., are thought to be able to make without incurring liability, and do not set forth the obligations of online auction business operators, etc. However, in cases where a online auction business operator, etc., has conducted handling in accordance with at least these guidelines, it is expected that the online auction business operator, etc., will be determined to incur no liability in court decision proceedings as well, and so on the occasion of voluntary response by the online auction business operator, etc., the handling in these guidelines is thought to be an important guideline, and it is expected that online auction business operators, etc., will ordinarily make responses in line with these guidelines.

These guidelines also exert no influence with respect to any cases other than those specified by these guidelines, and even in cases that are not specified in these guidelines or that do not satisfy the requirements set forth these guidelines, cases may exist that are applicable to the "reasonable ground" in article 3 of the Provider Liability Limitation Act. Additionally, these guidelines have been drafted by persons who are participating in this council, but after all, the Internet is open, and because civil liability relating to information distribution on the Internet does not become an issue solely between participants in this

council, it is expected that these guidelines will also be utilized by persons other than the participants of this council.

4 Revision

For these guidelines, appropriate revision according to advances in information and communications technology, the status of practices, and the like is thought to be necessary. Further, infringement of intellectual property rights via the Internet is not limited to trademark right. For example, cases where information pertaining to goods displayed in an online auction or other information distributed via web page can be determined relatively easily to be in violation of the Unfair Competition Prevention Act or the like are also conceivable. Accordingly, even after the establishment of these guidelines, examination by this council shall be continued, and improvement and expansion of the guidelines shall be conducted.

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II Scope of Application of the Guidelines

1 Actors of Notices

Ultimately, determination of whether information relating to goods displayed in an online auction or other information on goods distributed through the Internet is information of authentic goods (referring to goods to which the trademark right holder or a person licensed by the trademark right holder has affixed a registered trademark; hereinafter the same shall apply) cannot be conducted by a person other than the right holder, and also, if a notice from the right holder exists, it is expected that appropriate grounds sufficient for determining the presence or absence of trademark right infringement are presented, and so the actor of the notice of transmission prevention measures in these guidelines shall be the right holder. Specifically, these are as follows-

(1) The person issuing a notice of transmission prevention measures shall be the principal person alleging infringement of trademark right or exclusive right to use, or an agent thereof.

(2) In (1) above, "person alleging infringement of trademark right or exclusive right to use" shall, in addition to trademark right holders and holders of exclusive right to use, include persons (hereinafter referred to as "trademark right holders, etc.") who can be equated with these.

2 Modes of Covered Infringements of Rights

These guidelines cover cases where trademark right is infringed through the distribution of information through a specified telecommunications service.

As stated in I 2, for the purpose of interpretation of the Trademark Act, with respect to specified goods or goods similar thereto pertaining to trademark registration of a trademark right holder, the act of publishing on a web page photographs of goods to which is affixed a mark identical or similar to a registered trademark, or the act of displaying on a web page a trademark (affixed to information whose content comprises advertisement materials, etc.) identical or similar to a registered trademark by a person who assigns, etc., goods in the course of trade, is believed to have infringed trademark right.

Consequently, in cases where, with respect to specified goods or goods similar thereto, a person who assigns, etc., goods in the course of trade displays on a web page photographs of goods to which a trademark is affixed for the purpose of assigning goods, or in cases where a trademark (affixed to information whose content comprises advertisement materials, etc.) identical or similar to a registered trademark is displayed on a web page, trademark right can be said to have been infringed through distribution of information via a specified telecommunications service. Specifically, the following cases are conceivable-

- (1) Displays of counterfeit branded goods, etc., in online auctions;
- (2) Displays of counterfeit branded goods, etc., in shopping malls;
- (3) Advertisement materials intended to assign counterfeit branded goods, etc., on any other websites.

N.B.: In the foregoing (1), (2), and (3), cases where photographs of goods to which trademarks are affixed are published on a web page fall under article 2 paragraph (3) item (ii) of the Trademark Act ("to [...] display for the purpose of assignment or delivery [...] goods or packages of goods

to which a mark is affixed"), and can constitute trademark use. Also, even in cases where photographs of goods to which trademarks are affixed are not published, some cases where a brand name has been entered as the display title or the name of the goods fall under article 2 paragraph (3) item (viii) of the Trademark Act ("to display or distribute advertisement materials [...] relating to goods or services to which a mark is affixed, or to provide information on such content, to which a mark is affixed by an electromagnetic device"). Additionally, because the display of counterfeit branded goods, etc., in the online auctions and shopping malls of (1) and (2) above is publication of information for describing goods to unspecified persons to induce purchase by unspecified persons, it is thought to be advertisement of goods. Of course, even in cases ordinarily regarded as advertisement materials, some cases cannot be termed trademark use, such as cases merely of use simply to describe the content of the goods, where the use of brand names in display information is not to indicate the source of the displayed goods, and cases obviously not intended to mislead or cause confusion among consumers.

3 Information of Products Subject to Transmission Prevention Measures

Because transmission prevention measures for information by online auction business operators, etc., are a direct restriction on the expressive acts of the sender, it is desirable that information be covered for which probability of right infringement is high and it can easily be determined that the trademark of another have been unjustly infringed by a online auction business operator, etc., so that, where possible, incorrect measures are not taken, and also for the purpose of security for the reliability of guidelines.

Accordingly, in these guidelines, information of goods that falls under either of the two criteria below shall be subject to transmission prevention measures. Cases other than these also shall be added as required in cases where agreement is obtained through ongoing deliberation of this council, while taking into account the status of practices.

(1) Information relating to goods actually displayed on a web page can be determined not to pertain to authentic goods

Information of goods that falls under any of the following, in the absence

of special circumstances otherwise suggesting it to be information of authentic goods, may be determined not to be information of authentic goods-

(a) Goods which the sender of the information admits not to be authentic

(b) Goods of a type not manufactured by the trademark right holder, etc.

(c) Goods which the trademark right holder, etc., showing reasonable grounds, claims not to be authentic (excluding those that fall under (b))

(2) Determination of being trademark infringement can be made For information comprising advertisement materials, etc., of goods under (1) above, in cases where all items listed below can be verified, the probability that the information comprising advertisement materials, etc., of the goods has infringed trademark right is determined to be high.

(a) The sender of the information of advertisement materials, etc., assigns, etc., goods in the course of trade.

(b) The goods are identical or similar to specified goods of a registered trademark.

(c) A trademark identical or similar to a registered trademark of the relevant trademark right holder, etc., is affixed to the information comprising advertisement materials, etc., of the goods.

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III Processes, etc., of Notices

1 Procedures by the Trademark Right Holder, etc., at the Time of Notice (Written Forms, etc.)

(1) Notice procedures in accordance with these guidelines shall be conducted with the following processes-

(a) A person (including persons who can be equated thereto, and agents; hereinafter the same shall apply) alleging that his or her own trademark right or exclusive right to use has been infringed by distribution of information through a specified telecommunications service, when requesting that the concerned online auction business operator, etc., prevent distribution of information infringing the relevant trademark

right, shall enter the required items on a notice form and submit the notice form and other necessary documents to the online auction business operator, etc.

(b) With respect to a trademark right holder, etc., pertaining to the infringement of the relevant trademark right, in a case where there is a reliability verification organization in a specific relationship with the notice sender the notice submitter can submit the notice form and other necessary documents via the reliability verification organization. In such cases, the reliability verification organization shall conduct verification appropriately in accordance with IV with respect to the entered particulars, etc., of the notice form, draft a verification form to the effect that the verification was performed, and submit it together with the notice form to the online auction business operator, etc.

(2) As a general rule, notice procedures shall be conducted in writing. Provided, however, that because there are cases where promptly taking transmission prevention measures is demanded, in certain cases, notice by means of electronic mail, facsimile, or other electromagnetic means as required shall be permitted. Cases where notice by means of electronic mail, facsimile, etc., is permitted are the following-

(a) Cases where a certain ongoing relationship of mutual trust between the online auction business operator, etc., and the notice submitter is recognized, such as in cases of ongoing exchange, and wherein further the notice submitter, etc., after notice by means of electronic mail, facsimile, etc., promptly submits in writing a notice form of identical content as the notice by means of electronic mail, facsimile, etc. Additionally, in cases where the online auction business operator, etc., and the notice submitter, etc., have both agreed, omitting subsequent documentation submission shall be possible.

(b) In cases where the online auction business operator, etc., and notice submitter, etc., have both priorly agreed, cases of taking the measure of an official electronic signature or an electronic signature certified by an accredited certification business operator of the Act on Electronic Signatures and Certification Business (Act No. 102 of 2000; referred to hereinafter as the "Electronic Signatures Act") in the electronic mail making notice, and wherein further an electronic certificate pertaining to the electronic signature is attached to the electronic mail.

N.B. : Because verifying the identity of the notice is necessary, and leaving a record of notice having been made and of its content is also necessary, notice by telephone is not recognized.

2 Procedures by the Online Auction Business Operator at the Time of Receiving a Notice (Verification Items, Etc.)

(1) The online auction business operator, etc., which has received the notice form (and verification form) in 1 above, shall, with respect to the notice form, etc., verify that for each item described in IV of these guidelines, the required items are entered, the required documents are attached, and the entered contents are appropriate.

(2) The online auction business operator, etc., shall, after verifying the contents of the notice, carry out response as in VI of these guidelines.

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IV Notice Verification Items and Methods Thereof

1 Identity, etc., of Notice Actors

In cases of submission in accordance with these guidelines, the online auction business operator, etc., is to take smooth and prompt transmission prevention measures against the information. On the other hand, such may even create detriment for the sender, and in some cases, it is conceivable that a lawsuit could be instituted. Consequently, verifying who has made the notice and that the notice was made by said person is necessary, and requesting submission of documents, etc., from the notice submitter for verification is necessary.

(1) Cases of submission in writing

Verification of the identity of the notice submitter is performed by any of the following methods-

(a) In cases where notice is made directly to the online auction business operator, etc., in cases where the notice submitter is a juridical person, the name of the juridical person's representative (including a person who has been assigned authority from a representative) and a seal employing an official seal or a seal which the representative uses in

routine duties shall be affixed to the notice form, and along with this, material that allows certification of identity, such as a copy of a Certificate of Registered Matters, shall be attached. Provided, however, that in cases where the existence of the juridical person is thought to be easily recognized under ordinary circumstances, omitting attachment of material allowing certification of identity is also possible. Conversely, in cases where the notice submitter is an individual, the notice submitter shall affix name and seal to the notice form, together with attaching material that allows certification of identity, such as a copy of a driver's license, passport, or other such official certificate, and the online auction business operator, etc., shall verify identity by means of the attached materials, etc. Additionally, in cases where a certain ongoing relationship of mutual trust between the provider, etc., and the notice submitter is recognized, such as in cases of ongoing exchange, attachment of material allowing certification of identity can be omitted.

(b) For notices from overseas persons, a signature can substitute for name and seal.

(2) Cases of notice by electronic mail, etc.

In cases of notice by electronic mail, etc., identity is verified by the following methods-

(a) In the case of III 1 (2) a), identity shall be determined to have been appropriately verified by means of the notice submitter making indication in electronic mail, etc., of being the principal.

(b) In cases where the online auction business operator, etc., and notice submitter, etc., have both priorly agreed, in cases of taking the measure of an official electronic signature or an electronic signature certified by an accredited certification business operator of the Electronic Signatures Act in the electronic mail making notice, when an electronic certificate pertaining to the electronic signature is attached to the electronic mail, the online auction business operator, etc., shall verify identity by the electronic signature and electronic certificate.

2 Verification of being the Trademark Right Holder, etc.

Next, it is necessary to verify that the person who has made notice is the trademark right holder, etc. (that the relevant person holds the trademark right, etc.). In Japan, registration is a requirement for trademark right

and exclusive right to use, and because information on the right holder, etc., relating to these rights is open to the public, verification of being the trademark right and holder of exclusive right to use is thought to be easy. Additionally, in cases of submission from a person equated thereto, it is necessary that evidence that can certify that standing be submitted. Accordingly, in the notice, evidence such as the following shall be presented, and the online auction business operator, etc., shall verify thereby that the notice submitter is the trademark right holder, etc. Additionally, in cases where other appropriate items arise in the future, they shall be added as needed.

- (1) Trademark registry, and a copy of the trademark bulletin or a copy of search results for information relating to the trademark on the web page of the Industrial Property Digital Library provided by the National Center for Industrial Property Information and Training
- (2) Documentation proving a person to be able to be equated with the trademark right holder or holder of exclusive right to use

N. B. : URL of the Industrial Property Digital Library:
<http://www.ipdl.inpit.go.jp/homepg.ipdl>

3 Specification of Infringing Information

The distributed amount of information on the Internet is enormous, and even when notice has been made that distribution of information alleged to have infringed rights has occurred, often the description is imprecise and the online auction business operator, etc., cannot know what information is actually taken to be at issue. (Because of such circumstances, it is specified in article 3 paragraph (1) item (ii) of the Act that when the online auction business operator, etc., had no knowledge of distribution of information alleged to have infringed rights, liability with respect to the right holder is limited.) Because of this, from the standpoint of encouraging appropriate and prompt response by the online auction business operator, etc., in cases of a notice from a trademark right holder, etc., alleging that rights have been infringed, it is necessary that the information alleged to have infringed rights be specified.

Accordingly, the notice submitter shall specify the infringing information by the following methods when making notice-

(1) With respect to information in questions, the notice submitter shall record in the notice form its URL (Universal Resource Locator) and information reasonably sufficient for specifying the information in question as seen by the online auction business operator, etc. (goods name, identification information of the sender [ID, etc.], publication date and time, characteristics, etc.).

(2) The notice submitter shall, in cases where possible, make illustrations, etc., in a hard copy of the information in question.

(3) In cases where a online auction business operator, etc., that has received a notice cannot accomplish specification of right infringing using only the stated information, when additional information for correcting the notice form has been requested, the information requested by the online auction business operator, etc., shall be presented.

(4) In cases where the notice submitter fails to perform correction promptly, the online auction business operator, etc., shall communicate to the notice submitter that taking transmission prevention measures is difficult because of the inadequacy of the documents.

4 Verification of being Trademark Right, etc., Infringement

Even when a notice identifying infringing information has been made from a trademark right holder, etc., for the online auction business operator, etc., to take transmission prevention measures on the basis that right infringement has occurred, it is necessary to be able to determine that trademark right unquestionably was infringed by the distribution of information.

For this reason, it is necessary that the following content be indicated in the notice, and the online auction business operator, etc., shall verify whether it is recorded on the notice form.

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(1) Verification of existence of trademark right infringement covered by the guidelines

(a) Statement that trademark right has been infringed

The notice submitter shall record on the notice form that trademark right was infringed (including information on registered trademark,

registration number and reference, designated goods, etc.)

(b) Reason for alleging that trademark right has been infringed

The notice submitter shall record on the notice form that the goods pertaining to the infringing information are not manufactured, and so on

(2) Verification that the mode of right infringement is covered by these guidelines

On a basis of the information, etc., in the recorded on the notice form, the online auction business operator, etc., shall verify the mode of the relevant right infringement is a mode of right infringement covered by these guidelines (II 2), and also that it is information of goods subject to transmission prevention measures.

(3) Verification of not being licensed

The notice submitter shall record on the notice submitter a statement that no license has been granted to the sender of the information. (In cases where the notice submitter is the exclusive holder of nonexclusive right to use, the notice submitter shall record that the original right holder of the trademark right pertaining to the notice has granted no license to anyone other than the exclusive holder of nonexclusive right to use.) The online auction business operator, etc., shall verify that the statement has been recorded.

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V Notice through a Reliability Verification Organization

1 Criteria, Scope, etc., of Reliability Verification Organizations

In notices according to these guidelines, in cases where another credible third party verifies particular evidence by specified credible procedures, without the notice submitter being compelled to present it, verification of the identity, etc., of the notice submitter can be considered, when viewed from a social standpoint as well, to have been accomplished.

Specifically, in cases where an organization in a specific relationship to the notice submitter which satisfies the criteria provided for in 1 (1) of this chapter V (hereinafter referred to as a "reliability verification organization"), acting on behalf of the online auction business operator, etc., verifies the matters in IV 1, 2, and 4 (identity, being the trademark

right holder, etc., and being trademark right infringement) in accordance with the procedures in 2 of this chapter V and attaches documentation, etc., to the notice form that this verification was done, it is considered that the online auction business operator, etc., can be determined to have been appropriately verified by verifying the documentation, etc.

(1) Reliability verification organizations

It is necessary that reliability verification organizations be capable of appropriately verifying the matters in IV 1, 2, and 4 (identity, being the copyright holder, etc., and being trademark right infringement) on behalf of the online auction business operator, etc. Accordingly, it is necessary that reliability verification organizations satisfy the following requirements.

- (a) Be a juridical person (including organizations not having juridical personality in which having a representative is provided)
- (b) Be capable of appropriately verifying the contents of the rights held by the notice submitter
- (c) Have an adequate record extending over a reasonable period and expert knowledge relating to trademark right, etc.
- (d) Be capable of appropriately conducting the verification, etc., provided for in 2 (1) through (3) in this chapter V

Additionally, organizations that make protection of the rights of trademark right, etc., their principal objective are among the organizations specifically postulated as those satisfying requirements (a) through (c) above, but are not limited to these, and also, in order to be reliability verification organizations, even organizations that make protection of the rights of trademark right, etc., their principal objective must satisfy requirements (a) through (d).

(2) Explanations, etc. of reliability verification organizations

When sending a verification form to individual online auction business operators, etc., for the first time, a reliability verification organization shall communicate its own organization and procedures of verification, etc., with respect to verification items permitted of the organization by these guidelines, and in cases where any change thereof has occurred, shall promptly notify the individual online auction business operators, etc., regarding the change as well.

Online auction business operators, etc., can request of the reliability verification organization an explanation of procedures of verification,

etc., with respect to the verification items permitted of the organization by these guidelines.

(3) Certification of reliability verification organizations

For the actual implementation of these guidelines, it is conceivable that a structure be created to conduct examination with respect to reliability verification organizations, and persons certified to fall under requirements of (1) (a) through (d) uniformly be treated as reliability verification organizations of these guidelines. At this time, to contribute to simple and prompt handling for online auction business operators, etc., a reliability verification organization list shall be attached to these guidelines.

(4) Other

Even in cases of notice from trademark right holders, etc., in cases where verification of being trademark right infringement, etc., of the trademark right holder, etc., can be believed sufficient for trusting, judging from response systems of the trademark right holders, etc., expert knowledge and record relating to and trademark right, etc., response, etc., at the time of past notices at individual online auction business operators, etc., handling can be similar to cases where verification by an reliability verification organization exists.

2 Verification by Reliability Verification Organizations

For the items provided for in 1, 2, and 4 of IV (verification, being the copyright holder, etc., and being trademark right infringement), the reliability verification organization shall respectively make verification by means of the methods of (1) to (3) hereinafter, and record on the verification form (form D) that the verification was conducted. On the documentation, the name of the representative of the reliability verification organization shall be inscribed and a seal shall be affixed using an official seal, etc. Through this, the online auction business operator, etc., shall determine that verification was conducted appropriately for each item.

(1) Verification of the identity of the notice submitter (items of IV 1)

Verification shall be done by the following methods-

(a) Method of identity verification

Whether the notice submitter is the person who entrusted his or her own exercise of rights or whether he or she is his or her own member is verified by the name and seal on the notice form.

(b) Handling of electronic mail

In cases by electronic mail bearing an official electronic signature or an electronic signature certified by an accredited certification business operator under the Electronic Signatures Act, verification is through inspection of the electronic signature.

In cases of being a member and an ongoing relationship has existed from previously, in cases where certain verification by an ordinarily used electronic mail address or the like is possible, verification is conducted by another appropriate method.

(2) Verification that the notice submitter is the trademark right holder, etc. (items of IV 2)

Verification shall be done by the following methods-

(a) Verification by the trademark registry, trademark bulletin, or other documentation proving ownership of trademark right

(b) Verification by documentation proving identity as the holder of exclusive right to use or exclusive holder of nonexclusive right to use

(3) Verification of being infringement of trademark right (items of IV 4)

Verification shall be done by the following methods-

When the mode of right infringement is a mode of infringement of trademark right covered by these guidelines, the notice submitter enters on the notice form the reason for alleging that trademark right, etc., has been infringed, the mode of the trademark right infringement, and a method capable of verifying that trademark right infringement occurred, and on the basis of this information, etc., the reliability verification organization verifies that trademark right infringement exists, that the mode of trademark right infringement is covered by these guidelines, and that the information of the these guidelines is subject to transmission prevention measures.

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3 Response in Cases where Error, etc., has Occurred in the Verification Procedures of the Reliability Verification Organization

With respect to notices purported to have been made by conducting the verification procedures specified in V of these guidelines, in cases where the reliability verification organization does not adhere to the verification procedures or an error has occurred in the verification procedures that causes trust therein to be lost, the reliability of the verification procedures by that reliability verification organization is lost. Accordingly, in these cases, until it can be verified that the reliability verification organization has improved the verification procedures, notice forms from that reliability verification organization shall not be treated as adhering to procedures pursuant to these guidelines. Note, however, that regarding the treatment of that reliability verification organization, this shall not apply in cases where as a result of examination in the setup for performing examination in 1 (4) it has been verified that no risk of incorrect procedures being taken again and that applying these guidelines to the reliability verification organization hereafter is appropriate.

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VI Response by Online Auction Business Operators, etc.

1 Cases where the Notice and Verification Satisfy the Requirements of these Guidelines

(1) In cases where the notice satisfies the requirements of these guidelines, the online auction business operator, etc., shall promptly and within the limit necessary take measures of deletion, etc., in order to prevent transmission of the infringing information.

(2) Before taking or after taking transmission prevention measures, the online auction business operator, etc., can notify the sender of the information and notice submitter that transmission prevention measures for the infringing information will be taken or have been taken. In cases where this notification is made, with respect to the notification to the notice submitter, in cases where notice was conducted through a reliability verification organization, the online auction business operator, etc., shall notify the reliability verification organization, and the

reliability verification organization that has received the notification shall notify the notice submitter.

(3) With respect to taking or having taken transmission prevention measures, in cases where a complaint, inquiry, etc., from the sender has been made, the online auction business operator, etc., can request necessary cooperation of the notice submitter or reliability verification organization.

2 Cases where the Notice and Verification Fail to Satisfy the Requirements of these Guidelines

(1) In cases where a notice fails to satisfy the requirements of these guidelines, when correction of the notice form, verification form, etc., is believed possible, the online auction business operator, etc., can request the notice submitter to resubmit or additionally submit necessary documents, etc. In this case, the notice submitter can resubmit the notice form or additionally submit necessary documents, etc., in response to the request from the online auction business operator, etc.

(2) In cases where the online auction business operator, etc., requests resubmission or additional submission of necessary documents, etc., and where notice was conducted through a reliability verification organization, the online auction business operator, etc., shall contact the reliability verification organization, and the reliability verification organization that has received the contact shall contact the notice submitter or the like and resubmit the notice form or additionally submit necessary documents, etc.

(3) In cases where the notice submitter or the reliability verification organization fails to promptly perform correction, it is desirable that the online auction business operator, etc., communicate to the notice submitter that taking transmission prevention measures is difficult because of inadequate documents.

END

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(Form)

Heisei ○○ year ○○ month ○○ day

To: [○○ K. K.]

Name or appellation: ○○ ○○ seal

Concerning Notice for Measures to Prevent Transmission of Trademark Information Infringing Trademark Right

Because distribution of the following information published at the URL [http://] administered by your company infringes the trademark right held by [○○○○ (name or appellation of trademark right holder, etc.)], as indicated following, based on the "Provider Liability Limitation Act Guidelines Relating to Copyright," I request that your company take measures to prevent transmission of the information as follows-

1. Address of the notice submitter

2. Name of the notice submitter

3. Contact information of the notice submitter

Telephone number

E-mail address

4. Information for specifying the infringing information

URL

Type or name of the goods

Other characteristic [In the case of display in an online auction, information such as the display ID, date and time of display, etc.]

5. Right claimed to have been infringed

Trademark right

[Enter information helping to specify the trademark right, such as trademark, registration number, designated goods, etc.]

6. Reason, etc., for claiming that trademark right has been infringed

[Reason for claiming that trademark right has been infringed]

[□□□□ is my (this company's) registered trademark. I (this company) have given no permission whatsoever to △△△△ with respect to using the □□□□ registered trademark. Further, although the product information (advertisement material) pertaining to the infringing information is for

goods similar to goods manufactured by me (this company), the product pertaining to the infringing information is not manufactured by this company.]

[Statement that the mode of right infringement is covered by the Guidelines]

The infringing information specified in 4 falls under each of the following-

- (a) For the reasons below, the goods are not authentic.
 - (i) The sender of the information admits the goods are not authentic.
(Grounds thereof:)
 - (ii) The goods are of a type not manufactured by me (this company).
 - (iii) [Enter reasonable grounds.]
- (b) For the reason below, this matter falls under acts conducted in the course of trade.

[Enter the reason for falling under the "course of trade" requirement.]

- (c) The goods pertaining to the infringing information are identical or similar to the designated goods of the registered trademark.
- (d) A trademark identical or similar to the registered trademark is affixed to the infringing information.

7. Case of mode of right infringement not covered by the Guidelines
(State the mode of right infringement appropriately and in detail.)

8. Other matters for reference

Of the foregoing content, documentary evidence is attached for items [5 and 6].

Further, the foregoing content is affirmed to be factually correct.

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(Form in the Case of Making Notice through a Reliability Verification Organization)

Heisei year month day

To: [○○ K.K. (Customer Service Manager)]

Name of the juridical person: ◇◇◇◇

Representative ○○ ○○ (name) seal

Concerning Notice for Measures to Prevent Transmission of Trademark Information Infringing Trademark Right

We, a reliability verification organization under V 1 (1) of the "Provider Liability Limitation Act Guidelines Relating to Trademark Right," hereby affirm that, with respect to the content of the notice of measures to prevent transmission of a goods information infringing trademark right, etc., that [☆☆ K.K.], a member of our organization, made to your company on the date of Heisei ○○ year ○○ month ○○ day based on the same Guidelines, verification in accordance with V of the Guidelines was conducted appropriately with respect to the following items-

1. Notice submitter ☆☆ K.K. is a member of this organization.
2. This notice definitely was conducted by ☆☆ K.K.
3. Notice submitter ☆☆ K.K. is the (hereinafter trademark right holder, etc., the goods information "☆☆☆☆" on the notice form submitted to your company. [TRANSLATOR'S NOTE: ENGLISH TRANSLATION IS UNINTELLIGIBLE DUE TO APPARENT MISSING TEXT IN ORIGINAL JAPANESE]
4. The trademark right, etc. pertaining to the goods information has been infringed.
5. The mode of infringement of the trademark right, etc. in 4 is covered by the Guidelines.

It is affirmed that the foregoing content is factually correct.

N. B. : Attach other necessary materials.

END