

Litigation - Japan

Court rejects trademark infringement claim against online mall

Contributed by [Anderson Mori & Tomotsune](#)

November 16 2010

On August 31 2010 the Tokyo District Court rejected a trademark infringement claim against the operator of a shopping website in which one of the shops had sold infringing goods.

Goods that infringe a third party's IP rights are sometimes offered for sale by a 'shop' (typically owned by an individual or a small company) within a larger internet 'mall' (typically owned by a larger company). A similar situation arises when an individual offers infringing goods for sale on an auction website. Courts around the world have addressed the question of whether the operator of a mall or auction website is liable for infringement of the third party's IP rights in such cases.

In this case the operator of the largest internet mall in Japan was sued for trademark infringement based on the fact that one of the shops in the internet mall had sold infringing goods. The court held that the operator was not liable for trademark infringement because:

- the sale and purchase transactions were between the shop and its customers;
- the shop, rather than the mall, was responsible for transferring ownership and possession of the goods to customers;
- the mall did not control the shop in relation to sales of infringing goods; and
- the profit that accrued from sales of infringing goods was attributable to the shop.

For further information on this topic please contact [Yasufumi Shiroyama](#) at Anderson Mori & Tomotsune by telephone (+81 3 6888 1000), fax (+81 3 6888 3103) or email (yasufumi.shiroyama@amt-law.com).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

[Yasufumi Shiroyama](#)



Online Media Partners

