

Date	June 8, 2010	Court	Osaka District Court, 21st Civil Division
Case number	2008 (Wa) 7756, 2008 (Wa) 9083		
<p>– A case in which the court found that the customer information of the plaintiff, which is engaged in providing telephone fortune-telling service, may be considered to be a trade secret but that the defendants may not be considered to have used said customer information.</p>			

While the plaintiff made various claims, as far as the claim made based on the Unfair Competition Prevention Act is concerned, this case may be described as follows. The plaintiff, which is engaged in providing telephone fortune-telling service, alleged that the defendants, which had concluded a service agreement with the plaintiff and had been providing the plaintiff's customers with telephone fortune-telling service, conspired with Person P, who was engaged in providing reception service for the plaintiff, that Person P had stolen the plaintiff's customer data and established Company Q: which provides telephone fortune-telling service by using the plaintiff's customer information, and that the defendants concluded an agreement with Company Q and have been providing Company Q's customers with telephone fortune-telling service. Under these circumstances, based on Article 3 of said Act, the plaintiff sought an injunction, etc. against the business activities conducted by use of the plaintiff's customer information. The major issues in this court case are [i] whether the plaintiff's customer information may be considered to be a "trade secret" specified in Article 2, paragraph (6) of said Act and [ii] whether the defendants have used the plaintiff's customer information.

In this judgment, in light of the facts [a] that the plaintiff set a password for the computer software used to input and manage the plaintiff's customer information and disclosed the password only to the limited number of staff members who had worked for the plaintiff for a long time, [b] that the computers of any staff members other than the representative of the plaintiff and her husband were set in such a way that the customer information can be neither copied nor printed out, [c] that the plaintiff stored in a locked drawer of a shelf the tack seals indicating customer names and addresses to be attached to direct mails and the plaintiff also managed the number of tack seals by recording it in a notebook, and [d] that, when the plaintiff has concluded a service agreement with each of the staff members and fortunetellers, the plaintiff specified in the agreement that any employee or fortuneteller who divulges the plaintiff's customer information to outsiders shall pay a large penalty of 500,000 yen or one million yen as

damages. Also, in consideration of the size of the plaintiff's business where only six employees had access to the plaintiff's customer information, the court recognized that the plaintiff's customer information had been managed as a secret. The court also found the plaintiff's customer information to be useful and unknown to the public and found that the plaintiff's customer information may be regarded as a "trade secret" specified in Article 2, paragraph (6) of the Unfair Competition Prevention Act. Furthermore, the court found that Person P took the plaintiff's customer information from the plaintiff's office and that Company Q has conducted business activities such as sending direct mails by using the plaintiff's customer information. However, the court found that, in view of the facts that the defendants concluded an agreement with Company Q and merely provided telephone fortune-telling service to the customers introduced by Company Q and that the defendants may be considered to have neither conspired with Person P nor have learned that Company Q was conducting business by use of the plaintiff's customer information, the defendants may not be considered to have used the plaintiff's customer information. In conclusion, the court dismissed the plaintiff's claim filed based on the Unfair Competition Prevention Act.